

Date: March 1, 2006

Claimant: [name]

File Number: 06-0020

OPM Contact: Robert D. Hendler

The claimant is employed in a [GS-11] position with Department of the Air Force, 439 Civil Engineering Squadron, at Westover Air Reserve Base, in Chicopee, Massachusetts. In his letter of April 27, 2004, the claimant requested to file a back pay claim with the U.S. Office of Personnel Management (OPM). Our letter of June 3, 2004, rejected and returned the request without action for failure to provide a copy of a final agency decision on the matter. Based on subsequent contact with the claimant, we permitted him to resubmit the claim for further review. We clarified the underlying basis of the claim with the claimant on January 30, 2006. For the reasons discussed herein, the claim is denied.

The claimant states that his coverage under retained grade due to a reduction-in-force ended in February 2002, but he “remained on saved pay after that date.” He states that he worked 191.5 hours of overtime and “was paid an overtime rate the entire time.” However, the agency subsequently determined that he had been paid at an incorrect rate, issued a letter of indebtedness, and denied the claimant’s request for a waiver on the matter. The crux of the claim is:

I ended up working the 191.5 hours of overtime at a rate of \$1.55 an hour less that [sic] my hourly rate, not what I agreed to when I was requested to work overtime in support of the mission...I am requesting that the overtime monies that were taken from me, be returned to me. I had already worked the overtime hours and I had no idea what had transpired nor was any of the circumstances under my control.

The documents provided by the claimant include a letter, dated August 2, 2004, from the base Finance Services Officer, stating:

...Defense Finance and Accounting Service provided excellent service...by referring his claim to the Defense Office of Hearings and Appeals [DOHA] for review. Their 23 January 2004, response represents

a legal opinion that there was no valid overpayment claim to consider for waiver. There is no avenue for payment of overtime pay...because the change of his personnel record from wage grade schedule to general schedule resulted in his bumping against the ceiling for pay purposes

I am returning the claim package and will take no further action in this matter

The January 23, 2004, DOHA decision indicates that the agency “advised... [the claimant] that a waiver was not appropriate because he was no longer indebted to the United States.... [The claimant] is now requesting that we review your determination.” The record shows that DOHA denied the waiver because the claimant had sufficient overpayment funds to offset the underpayment. As a result, there was no remaining debt to waive.

The waiver request brought before DOHA is separate and distinct from the claim filed by the claimant with OPM. As a result of legislative and executive action, the authority to waive overpayments of pay and allowances resides with the heads of agencies, regardless of the amount. *See* the General Accounting Office Act of 1996, Pub. L. No. 104-316, 110 Stat. 3826, approved October 19, 1996, and the Office of Management and Budget (OMB) Determination Order dated December 17, 1996. In contrast, OPM has authority to adjudicate compensation and leave claims under 31 U.S.C. §3702. In the instant case, the claimant has standing to challenge the underlying determination by his agency by means of filing a compensation claim. The agency’s spurious refusal to accept and process this claim constitutes the final agency action on this matter and makes it ripe for our adjudication.

The issue before us is whether the agency erred in calculating the rate of pay for the 191.5 hours of overtime performed by the claimant. The record shows that the claimant occupied (and continues to occupy) a Fair Labor Standards Act exempt position during the claim period. As a competitive service GS employee, he was and is covered by the premium pay overtime computation provisions of 5 U.S.C. § 5542. During the claim period (various periods in calendar year 2002), an employee whose rate of basic pay exceeded the minimum rate for GS-10 (including any applicable locality-based comparability payment under 5 U.S.C. 5304, as was the case for the claimant), was entitled to an overtime hourly rate of pay equal to one and one-half times the minimum hourly rate of basic pay for GS-10 (including any applicable locality-based comparability payment under 5 U.S.C. 5304, as was the case for the claimant). This was the “pay cap” cited by the agency. The claimant’s position was covered by the “*Rest of United States*” locality pay table for which such maximum overtime hourly rate was \$29.63. As indicated by the claimant, this was \$1.55 per hour less than his own hourly rate of basic pay.

The claimant seeks to estop the Federal Government from denying him benefits because he expected to receive full time and one-half his hourly rate of basic pay for the overtime work he performed, but the money was subsequently taken away when agency staff realized “I was placed in the wrong pay system caused by an administrative error.” The claims jurisdiction of this office is limited to consideration of legal liability. OPM has no authority to authorize payment based solely on equitable considerations.

63 Comp. Gen. 50 (1983). Detrimental reliance is not a legal basis for the payment of appropriated funds. 56 Comp. Gen. 943 (1977). It is well established that the Government cannot be estopped from denying benefits that are not permitted by law, even where the claimant relied on mistaken advice from a Government official or agency. A claim for payment of money from the U.S. Treasury contrary to a statutory appropriation is prohibited by the Appropriations Clause of the Constitution, Art. I, 9, cl. 7. Recognition of equitable estoppel could nullify the clause if agents of the Executive branch were able, by their unauthorized oral or written statements, to obligate the U.S. Treasury contrary to the wishes of Congress. See *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990), *Falso v. Office of Personnel Management*, 116 F.3rd 459 (Fed Cir. 1997), and *Melvin Ackley, Jr.*, B-200817, April 21, 1981. Therefore, the claimant's request for equitable estoppel must be denied and the underlying debt which constitutes the basis of his claim must be affirmed.

Also implicit in the claimant's request is that he should not be penalized for an administrative error made by his agency. OPM's authority in section 3702 is narrow and limited to adjudication of compensation and leave claims. Neither Pub. L. No 104-316 nor OMB's Determination Order of December 17, 1996, authorizes the United States Office of Personnel Management (OPM) to make or to review waiver determinations involving erroneous payments of pay or allowances. This issue has already been decided by the claimant's agency. Accordingly, OPM does not have jurisdiction to consider, or issue a decision on, the request for a waiver of the claimant's indebtedness to the United States.

This settlement is final. No further administrative review is available within the OPM. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States Court.