Compensation Claim Decision Under section 3702 of title 31, United States Code

Claimant:	[name]
Organization:	[agency component] U.S. Government Printing Office [city & State]
Claim:	Back Pay for Overlong Details
Agency decision:	Denied
OPM decision:	Denied
OPM file number:	09-0008

//Judith A. Davis for

Robert D. Hendler Classification and Pay Claims Program Manager Center for Merit System Accountability

October 7, 2009

Date

On January 21, 2009, the U.S. Office of Personnel Management's (OPM), Center for Merit System Accountability, received a back pay claim from [claimant]. The claimant is employed as a [position], at the U.S. Government Printing Office in [city & State]. She requests back pay for two overlong details.

The claimant asserts in her claim submission that she was detailed to the positions of Supply Management Officer, PG-11 (Assistant Branch Chief), and Supply Management Officer, PG-12 (Branch Chief) from January 2001 to present/2007. The agency, in its administrative report received by us on March 30, 2009, clarifies that the claimant alleges she was detailed to the PG-11 position from January 2001 through April 2004, and the PG-12 position from April 2004 through March 2008. The agency states that when investigating her claims (treating the alleged details to the PG-11 and PG-12 positions as separate claims), they requested the claimant provide any additional documentation to support her claim she was detailed to the two positions, but she was unable to do so. The agency also states the Manager of the [agency component], whom the claimant asserts ordered the details, controverted her claim to the PG-12 position and stated he had no knowledge of her having been detailed to the position.

Procedures for settling claims against the United States that may be settled by OPM are described in Part 178 of title 5, Code of Federal Regulations (CFR). Under 5 CFR 178.105:

The burden is upon the claimant to establish the timeliness of the claim, the liability of the United States, and the claimant's right to payment. The settlement of claims is based upon the written record only, which will include the submissions by the claimant and the agency. OPM will accept the facts asserted by the agency, absent clear and convincing evidence to the contrary.

OPM does not conduct investigations or preside over adversary hearings in adjudicating claims, but relies on the written record submitted by the parties. *See Frank A. Barone*, B-229439, May 25, 1988. Where the record presents a factual dispute, the burden of proof is on the claimant to establish the liability of the United States, and where the agency's determination is reasonable, OPM will not substitute its judgment for that of the agency. *See, e.g., Jimmie D. Brewer*, B-205452, March 15, 1982, as cited in *Philip M. Brey*, B-261517, December 26, 1995. Where the written record presents an irreconcilable dispute of fact between a Government agency and an individual claimant, the factual dispute is settled in favor of the agency, absent clear and convincing evidence to the contrary. *5* CFR 178.105; *Matter of Staff Sergeant Eugene K. Krampotich*, B-249027, November 5, 1992; *Matter of Elias S. Frey*, B-208911, March 6, 1984; *Matter of Charles F. Callis*, B-205118, March 8, 1982.

The claimant has provided no documentation, evidence, or affidavits to support her claim that she was detailed to the two higher-graded supervisory positions cited above. We note that if she had been performing all of the duties and responsibilities of these positions for the multiple years claimed, including the full range of administrative supervisory and/or managerial functions as documented in the position descriptions, documentation should be readily available in the form of, for example, leave approvals, performance appraisals, or other personnel-related documents signed by the claimant for the subordinate staff, or other documents related to the internal operations of the branch normally signed by the Branch or Assistant Branch Chiefs. In the absence of any such evidence, the claimant has not established the liability of the United States or her right to payment and the claim is accordingly denied. This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the employee's right to bring an action in an appropriate United States court.