

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

Claimant: [name]

Organization: [agency component]
Department of the Army
[city & State]

Claim: Back pay due to misclassification

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 09-0019

//Judith A. Davis for

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Classification and Pay Claims
Program Manager
Center for Merit System Accountability

8/28/2009

Date

The claimant's October 15, 2008, letter to the U.S. Office of Personnel Management (OPM) indicates the claimant is a retired Federal civilian who seeks to receive lost wages due to a classification error his former employing agency has since corrected, but "only after working [him] at the wrong grade for six years." He states the correction occurred six months before his retirement. The claimant states he "submitted a claim to the Louisville CPAC on 24 July 2008, and received delivery conformation [sic] on 26 July 2008". The claimant also states he has received no response and that he is submitting his claim "directly to [OPM] and cannot include any agency response." OPM received the claimant's request on October 27, 2008, and background information from the former employing agency on February 11, 2009. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate this claim.

The record is unclear as to the legal and regulatory basis of the request. The claimant appears to be requesting back pay for a period of time he believes he performed higher graded duties. Even though 5 U.S.C. §§ 5112 and 5346(c) authorize OPM to decide position classification and job grading appeals, respectively, OPM's authority to adjudicate compensation and leave claims flows from a different law -- 31 U.S.C. § 3702. The authority in § 3702 is narrow and limited to adjudications of compensation and leave claims. Section 3702 does not include any authority to decide position classification or job grading appeals. Therefore, OPM may not rely on 31 U.S.C. § 3702 as a jurisdictional basis for deciding position classification or job grading appeals, and does not consider such appeals within the context of the claims adjudication function it performs under § 3702. *Cf. Eldon D. Praiswater*, B-198758, December 1, 1980, (Comptroller General, formerly authorized to adjudicate compensation and leave claims under section 3702, did not have jurisdiction to consider alleged improper job grading); *Connon R. Odom*, B-196824, May 12, 1980, (Comptroller General did not have jurisdiction to consider alleged improper position classification); OPM file number 07-0020, March 16, 2007.

Furthermore, the clear and unambiguous language of 5 U.S.C. 5112(b) requires us to adjudicate appeals under the provisions of subsection (a). That subsection requires OPM to "ascertain currently the facts as to the duties, responsibilities, and qualification requirements of a position." This statutory requirement is reiterated in section 511.607(a)(1), title 5, Code of Federal Regulations (CFR) and cannot be met if the requesting employee no longer performs the work of the position that he or she wishes to appeal. OPM's *Introduction to the Position Classification Standards* (PCS's) states OPM will cancel an appeal when: "The employee is no longer officially assigned to the position, unless there is a possibility of a retroactive benefit..." A retroactive benefit is limited to instances where an employee is wrongfully demoted and suffered a loss of grade or pay (5 CFR 511.703). It is also well settled that employees are not entitled to back pay for periods of misclassification. 5 U.S.C. § 5596(b)(3). *See United States v. Testan*, 424 U.S. 392, 400 (1976) and *Erlyn D. Felder*, B-202685, August 17, 1982. In the instant case, the claimant's right to file a classification appeal ended when he left his position upon retirement from Federal service.

Although we have no jurisdiction to render a decision in this matter, we also note a claimant may not file with OPM until he or she has received an agency-level claim denial (5 CFR 178.102(a) and (b)). Information provided by the agency shows the claimant filed an appeal on July 8, 2008, with the Merit Systems Protection Board (MSPB) for: "retroactive pay at the GS-13 level for the six years that my position was incorrectly classified and recalculation of my retirement annuity with a corrected 'high three'." The claimant's July 22, 2008, letter to his former employing agency cited the resultant MSPB docket number (CH-3443-08-0635-I-1) regarding

his “misclassification [sic] claim.” The claimant’s subsequent July 24, 2008, letter is identified as: “Formal claim for lost wages due to position miss-classification [sic].” Thus, the record supports the conclusion the claimant’s July 24, 2008, letter did not constitute a claim against the agency under 31 U.S.C. 3702 but, rather, was part of the appeal he filed with MSPB which subsequently denied his appeal for lack of jurisdiction on August 15, 2008. Therefore, we must conclude the claimant has not met his burden showing that he ever filed a claim under 31 U.S.C. § 3702 and part 178 of 5 CFR. Even assuming he had filed a claim with his former employing agency, his claim would not have been ripe for adjudication by OPM since his agency has never issued a final agency-level claim denial. Therefore, for the foregoing reasons, the claim is denied for lack of jurisdiction.

In his letter to the agency and appeal to MSPB, the claimant also sought to have his Federal annuity recalculated, presumably in anticipation of the retroactive reclassification of his former position which, as discussed previously, is barred by statute. The claimant did not specifically raise this issue in his October 15, 2008, claim request to OPM. Therefore, we will not address this issue further other than to note retirement claims are not covered by 31 U.S.C. 3702. They are under the jurisdiction of OPM’s Center for Retirement and Insurance Services. See <http://www.opm.gov/retire/index.aspx>.

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