

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

Claimant: [name]

Organization: [agency component]
U.S. Forest Service (FS)
U.S. Department of Agriculture (USDA)
[city & State]

Claim: Waiver of indebtedness for travel
overpayment

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 09-0022

//Judith A. Davis for

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

3/31/2009

Date

In a February 13, 2009, letter to the U.S. Office of Personnel Management (OPM) received on February 24, 2009, claimant's attorney advised OPM that his firm represents the claimant, and that the claimant seeks a waiver of overpayment for three bills in the combined amount of \$5,704.83. This claim had previously been denied by the Assistant Director for Security, Benefits and Compensation, Albuquerque Service Center (ASC), Human Capital Management (HCM). The attorney states:

[The claimant] was denied substantive and procedural due process in the determination, and we believe that the finding of overpayment is not supported by the evidence and is arbitrary, capricious and is in error of appropriate laws and departmental regulations. [The claimant] has never been afforded an opportunity to provide his side of this case in a full and unbiased forum, the matter was not investigated properly, and we therefore have sought to commence the appeal process.

The claimant retired from his [position] with the FS on January 3, 2007. The record shows the attorney seeks to appeal the denial of waiver of the alleged overpayment for what he and claimant assert were officially authorized travel expenses. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

Part 178, subpart A of title 5, Code of Federal Regulations (CFR), concerns the adjudication and settlement of Federal civilian employee claims for compensation and leave. Section 178.103 states that a claim filed by a claimant's representative must be supported by a duly executed power of attorney or other documentary evidence of the representative's right to act for the claimant. The claim request did not contain such documentary evidence. Because the requirements of 5 CFR 178.103 have not been met in this case, the attorney who submitted this request does not have standing to represent the claimant on this matter before OPM. However, based on the information submitted into the record, we may render a decision on this matter on jurisdictional grounds.

The record shows the claimant was advised by ASC, HCM, FS, USDA, on September 29, 2008, that his request for a waiver for the three previously described bills had been denied. The agency advised:

A claim denial by the ASC/HCM is final. You have the right to appeal the ASC-HCM decision to OPM **only as regards to procedural issues** (such as; [sic] arbitrary, capricious, or in error of the laws or regulations), [sic] **there is no appeal of the agency decision to deny waiver of the overpayment.**

As a result of legislative and executive action, the authority to waive overpayments of pay and allowances now 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. Neither Pub. L. No. 104-316 nor OMB's Determination Order of December 17, 1996, authorizes OPM to make or to review another agency's waiver determinations involving erroneous payments of pay or allowances. Therefore, OPM does not have jurisdiction to consider, or issue a decision on, the denial of a request for a waiver of claimant's indebtedness to the United States.

In addition to seeking a waiver, the attorney appears to challenge the propriety of the underlying debt. Under 31 U.S.C. § 3702(a)(2), OPM has authority to settle the compensation and leave claims for many Federal employees. However, under 31 U.S.C. § 3702(a)(3), the Administrator of General Services has authority to settle claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station, and has assigned this function to the General Services Administration's Civilian Board of Contract Appeals. Therefore, OPM does not have subject-matter jurisdiction over the underlying debt at issue in this claim.

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.