

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

**Claimant:** [name]

**Organization:** [agency component]  
Defense Logistics Agency (DLA)  
Yokosuka, Japan

**Claim:** Pay setting (Transportation Security Agency (TSA) to Federal Wage System (FWS) with geographic move)

**Agency decision:** Denied

**OPM decision:** Granted in part

**OPM file number:** 10-0010

//Ana A. Mazzi

---

Ana A. Mazzi  
Deputy Associate Director  
Merit System Audit and Compliance

6/28/2010

---

Date

The claimant was employed by TSA in San Jose, California, as a Transportation Security Manager, SV-1801-H. He subsequently applied and was selected for the position of [WS-8] with the [agency component] in Yososuka, Japan, effective June 8, 2008. He believes his pay was set incorrectly in the new position. The U.S. Office of Personnel Management (OPM) received the claim on December 8, 2009, and the agency administrative report on January 26, 2010. For the reasons discussed herein, the claim is granted in part.

The claimant states that he accepted the [WS-8] job offer at the step 5 level on February 15, 2008. He states that he notified TSA on May 9, 2008, that he was transferring to DLA. The claimant states his household goods for shipment to Japan were picked up on June 4, 2008. The claimant states that on June 5, 2008, he received a call from DLA human resources advising him that it had erred in setting his pay and his pay would be adjusted to Step 1 [\$25.54 per hour] and “[w]as told [he] had the option to back.” The claimant states he and his spouse and son departed for Japan on June 7, 2008. He states that his “pay was unjustly modified in a manner that left [him] very little and [sic] disagreeable alternative that [he] had to proceed and carry out [his] OCONUS job assignment for DLA.” The claimant states his “contention is that [he] signed on and accepted a position (which is akin to a contract) at the Step 5 level [\$29.79 per hour] and [his] pay should be set accordingly.”

Subpart H of Part 532 of title 5, Code of Federal Regulations (CFR) contains the regulatory basis for the pay administration of positions covered by prevailing rate systems, e.g., FWS positions. Section 532.401 of 5 CFR provides the following definitions:

*Highest previous rate* means the highest scheduled rate of pay previously paid to a person while employed in any branch of the Federal Government, a mixed-ownership corporation, or the government of the District of Columbia.

*Promotion* means a change in the position of an employee who, while continuously employed-

(1) Moves from a position in one grade of a prevailing rate schedule established under this part to a position at a higher grade of the same type prevailing rate schedule, whether in the same or a different wage area;

(2) Moves from a position under a prevailing rate schedule established under this part to a position under a different prevailing rate schedule (e.g., WG to WL) with a higher representative rate; or

(3) Moves from a position not under a prevailing rate schedule to a position with a higher representative rate under a prevailing rate schedule

*Rate of basic pay* means the schedule rate of pay plus any night or environmental differential.

*Representative rate* means the going rate or step keyed to the prevailing rate determinations. For example:

(1) The established rate on a single rate schedule;

- (2) The second rate on a five-rate regular wage schedule
- (3) The fourth rate on the General Schedule; or
- (4) The fourth rate of a class under the Foreign Service Officer and Foreign Service Staff schedule.

*Scheduled rate of pay* means the rate of pay fixed by law or administrative action, including a retained rate of pay, for the job held by an employee before any deductions and exclusive of additional pay of any kind.

Under Subpart H, comparing representative rates determines whether the action is a promotion, a reassignment, or a change to lower grade. The record shows the claimant was receiving \$51,739 per annum (pa) basic pay with a locality adjustment of \$16,831 in his Transportation Security Manager, SV-1801-H, position effective January 6, 2008. Under the TSA pay band system, the rate of basic pay does not include locality pay and the bands do not have established representative rates. Therefore, for pay setting purposes upon movement into his DLA FWS position, the rate of basic pay the claimant was receiving is treated as the representative rate of his TSA position; i.e., \$51,739, resulting in an hourly rate of \$24.79 when using the 2087 hour divisor required by 5 U.S.C. § 5504(b)(1).

FWS Pay Table 900R covering FWS appropriated fund employees in foreign areas effective at the time the claimant was placed in the [WS-8] position shows a representative rate (Step 2) of \$26.60. Since \$26.60 is a higher representative rate than \$24.79, the claimant's placement in the [WS-8] position is a promotion for purposes of FWS pay setting.

Under 5 CFR 532.407(a), an employee who is promoted is entitled to be paid at the lowest scheduled rate of the grade to which he or she is promoted which exceeds the employee's existing scheduled rate of pay by at least four percent of the representative rate of the grade from which promoted. In the claimant's situation, \$25.78 represents a four percent increase from \$24.79. Because \$25.78 exceeds Step 1 of the WS-8 grade in the applicable prevailing rate schedule, the claimant's pay should have been set at step 2 (\$26.60).

It is well established that payments of money from the Federal Treasury are limited to those authorized by law, and erroneous advice or information provided by a Government employee cannot bar the Government from denying benefits which are not otherwise permitted by law. *Office of Personnel Management v. Richmond*, 496 U.S. 414, 110 S. Ct. 2465, *rehearing denied*, 497 U.S. 1046, 111 S. Ct. 5 (1990). See also OPM file number S9700423; OPM file number 9700369, January 15, 1998; OPM file number S98001982, October 2, 1998; and OPM file number S001584, November 16, 1998. Because the agency's initial pay offer of Step 5 (\$29.79) is contrary to 5 CFR 532.407(a), the claimant's request to be paid at Step 5 is denied.

As discussed previously in this decision, however, the claimant's pay should have set at step 2 (\$26.60). Therefore, as provided in 5 CFR 550.805, the claimant is due back pay for the difference between step 1 (\$25.54) and step 2 (\$26.60). As stated in 5 CFR 550.806, the claimant is also owed interest on the back pay.

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.