

**U. S. Office of Personnel Management
Compensation Claim Decision
Under section 3702 of title 31, United States Code**

Claimant: [name]

Organization: Department of Health and Human Services
[agency component]
[city & State]

Claim: Compensatory time for travel

Agency decision: Denied

OPM decision: Denied

OPM file number: 11-0014

//Judith A. Davis for

Robert D. Hendlar
Classification and Pay Claims
Program Manager
Merit System Audit and Compliance

12/5/2011

Date

The claimant formerly occupied a Medical Officer, GS-0602-15, position with the Department of Health and Human Services (HHS), [agency component], in [city & State]. He requests the U.S. Office of Personnel Management (OPM) review [agency component's] denial of his claim for compensatory time off for travel (CTT) for the period May 13, 2009, to May 15, 2009. OPM received the claimant's May 6, 2010, claim request on May 21, 2010. By letter dated June 10, 2010, OPM declined to accept the claim because the claimant failed to submit information showing he had filed a written, signed claim with his employing agency or that he had received a decision on the matter from an official in his employing agency authorized to issue such a decision. OPM received a second claim request on March 1, 2011, which included a copy of the December 10, 2010, HHS claim denial, and the agency administrative report on March 23, 2011. OPM requested additional information from HHS on June 17, 2011, and received it on September 1, 2011. For the reasons discussed herein, the claim is denied.

The record shows that the claimant was authorized to travel to Orlando, Florida on Wednesday, May 13, 2009, to lead training sessions with contractors and to return on Friday, May 15, 2009. However, while in travel status, the claimant changed his return flight from Friday, May 15, 2009, to Thursday, May 14, 2009. This change resulted in the claimant's traveling during non-work hours on May 14, 2009. On September 1, 2010, the claimant submitted a request for compensatory time for travel for Thursday, May 14, 2009, more than one year after completion of the travel. The supervisor disapproved the request because "there was no expectation on my behalf that you would be traveling on this day." The supervisor had no record that the claimant requested permission to change his travel plans to return home on Thursday, May 14, 2009.

The claimant states he combined personal business with work on the Orlando trip. He booked a restricted airline ticket, which he stated "accrued significant cost savings to the agency." The claimant states:

I have elected to travel beyond my duty hours on the return leg, rather than spend an additional day and travel during duty hours. Management does not have the right to compel me to do this, but it is the fiscally prudent thing to do. These schedules that save a day in travel status are advantageous to the agency and have always been approved.

The record shows that the claimant does not believe approval from the supervisor to change travel plans is necessary.

The claimant states he submitted his request for CTT shortly after returning from the Orlando trip; however, the record does not contain any evidence to support this assertion. The supervisor stated in an e-mail dated July 22, 2010, he had not received a CTT request for the Orlando trip and asked the claimant to submit his request for his consideration. The claimant submitted a "reconstructed" [agency component] Form 20029, Management's Request, Authorization and Report of Section 203, Compensatory Time for Travel for Exempt and Non-Exempt Employees, for the Orlando trip on September 1, 2010. The supervisor disapproved the claimant's request on October 19, 2010, stating the claimant did not request management approval in advance to change the claimant's return date from May 15, 2009, to May 14, 2009. The supervisor stated that if the claimant had not changed the time and date of his return travel, he would have traveled during working hours, thus incurring no CTT. The claimant stated "the agency makes much of the 475 day delay from time of travel to submission of the CTT request and this is hypocritical and false."

Under 5 CFR 550.1403, travel is defined as “officially authorized travel—i.e., travel for work purposes that is approved by an authorized agency official or otherwise authorized under established agency policies.”

Under 5 CFR 550.1404(a), an agency must credit an employee with CTT in a travel status if (1) the employee is required to travel away from the official duty station and (2) the travel time is not otherwise compensable hours of work under other legal authority. Section 550.1405(b) of title 5, CFR, states:

An employee must comply with his or her agency’s procedures for requesting credit of compensatory time off under this section. Employees must file such requests within the time period required by the agency. An employee’s request for credit of compensatory time off for travel may be denied if the request is not filed within the time period required by the agency.

HHS Guide for Timekeeping, Chapter 8, *Rules*, states:

To qualify for compensatory time off for travel, travel must be officially authorized for work purposes and must be approved by an authorized agency official or otherwise authorized under established agency policies. Employee’s travel order should reflect eligibility for CTT. If CTT is not authorized and travel plans change to extent that the employee became eligible for CTT, the employee must submit written documentation supporting his/her eligibility within two weeks after his or her return from travel status. If documentation is sufficient, the supervisor may authorize CTT.

In the claim request, the claimant states he elected to travel beyond his duty hours on the return trip rather than spend an additional day and travel during duty hours to reduce travel expenditures. He states management does not have the right to compel him to do this, but it was the fiscally prudent thing to do and his supervisor informed him he could come early if he could. The claimant stated his supervisor was granting him permission to return that night, if possible. However, the supervisor stated “he had no record that the claimant contacted him to request a change in the return date.”

The Gov Trip travel order provided by both the claimant and the agency shows the claimant was authorized to return home on Friday May 15, 2009, on Airtran Airlines, departing Orlando International Airport at 10:00 am and arriving at Baltimore-Washington International Airport at 12:11 pm. The order also shows the authorized rental car should be dropped off on Friday, May 15, 2009. HHS Guide for Timekeeping, Chapter 8, *Rules*, states employee’s travel order should reflect eligibility for CTT. The airline departure date and time, as shown on the travel order, reflects the supervisor’s expectation that the claimant would be traveling during the normal work day with no eligibility for CTT.

OPM does not conduct investigations or adversary hearings in adjudicating claims, but relies on the written record presented by the parties. See Frank A. Barone, B-229439, May 25, 1988. Where the record presents an irreconcilable factual dispute, the burden of proof is on the claimant to establish the liability of the United States. 5 CFR 178.105; Jones and Short, et al., B-205282, June 15, 1982. Where the agency’s determination is reasonable, we will not substitute our judgment for that of the agency. See, e.g., Jimmie D. Brewer, B-205452, Mar. 15, 1982, as cited in Philip M. Brey, B-261517, December 26, 1995. The claimant has failed to establish that

his supervisor approved the change in travel dates that would have resulted in the claimant earning CCT or that he submitted his request for compensatory time for travel within the prescribed 15 days as required by HHS Guide for Timekeeping, Chapter 8, Rules. Therefore, the claim is 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.