

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

Claimant: [name]

Organization: [agency component]
U.S. Office of Personnel Management

Claim: Pay setting

Agency decision: Denied

OPM decision: Denied

OPM decision number: 11-0032

//Judith A. Davis for

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

3/22/2012

Date

The claimant, who is employed as a [position], with the U.S. Office of Personnel Management (OPM), seeks to challenge “the reduction in salary that was offered to [him] in [his] conditional job offer from GS-14, step 4, to GS-14, Step 2.” He states he considers this “an adverse action without due cause.” OPM's Merit System Audit and Compliance (MSAC) component initially received the claim on June 22, 2011 (originally docketed as 11-0025), from the OPM servicing human resources office which forwarded the claim on the claimant's behalf. *See* title 5, Code of Federal Regulations (CFR) 178.102(b). However, the claimant's June 9, 2011, email to his supervisor seeking to grieve “the reduction in his salary” failed to comply with the requirements of 5 CFR 178.102(a) that a claim be submitted in writing and signed. Further, the June 21, 2011, grievance decision issued by the OPM servicing human resources office responding to the claimant's June 9, 2011, email failed to address the merits of the claim. We received a copy of a signed, written claim from the claimant on July 6, 2011, and a revised grievance decision stating it reflected a decision on the merits of the claim, on July 7, 2011, and the agency administrative report on the claim on October 4, 2011. For the reasons discussed herein, the claim is denied.

The claimant's rationale is contained in the preceding paragraph. In its claim package which MSAC received on June 22, 2011, the agency explains the claimant's salary was initially set incorrectly using a previous rate earned with the U.S. Postal Service:

. . . however, the pay calculation was incorrect because the Agency erroneously calculated his highest previous rate by slotting his USPS [U.S. Postal Service] rate into the underlying General Schedule without any locality pay, and then adding locality pay on top (resulting in an erroneous pay rate of GS-14 step 4). Instead, when computed correctly, the highest previous rate calculation (following the rules in 5 CFR 531.221(d)) is lower than the maximum payable rate that could be paid to him on his more recent DOD (Department of Defense) service (using National Security Personnel System (NSPS) rules in 5 CFR 9901.372 to convert an employee to a General Schedule (GS) position).

The record shows the claimant moved effective August 1, 2010, from a Management Analyst, DJ-343-03, position with the U.S. Army Medical Research and Materiel Command at Fort Detrick in Frederick, Maryland, to a Management Analyst, YA-343-02, position with the U.S. Army Contracting Command at Fort Belvoir, Virginia, by means of career reinstatement. The Fort Detrick position was classified under demonstration project authority covering Science and Technology Reinvention Laboratories.¹ The U.S. Army Contracting Command position was classified under the NSPS. The claimant transferred to a [GS-14] position with OPM effective May 8, 2011.

A January 5, 2008, U.S. Postal Service (USPS) Notification of Personnel Action shows the claimant was employed by USPS prior to his employment at Fort Detrick with a “base salary” of

¹ Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law (Pub.L.) 103–337 (10 U.S.C. 2358 note), as amended by section 1109 of NDAA for FY 2000, Public Law 106–65, and section 1114 of NDAA for FY 2001, Public Law 106–398, authorizes the Secretary of Defense to conduct personnel demonstration projects at Department of Defense laboratories designated as Science and Technology Reinvention Laboratories.

\$89,445 per annum. It appears OPM's job offer was based on its discretionary authority under 5 CFR 531.221(a)(1) to apply the maximum payable rate (MPR) rule using the claimant's USPS "base salary" to determine the claimant's payable rate of basic pay under the GS pay system upon his transfer to OPM. Since the claimant's USPS rate is under a non-GS pay system, OPM should have applied the provisions of 5 CFR 531.221(d) to determine his MPR based on his USPS employment as follows:

Step A: Compare the highest previous rate (HPR) to the highest applicable rate range (including a locality rate or special rate range) in effect at the time and place where the highest previous rate was earned. The highest applicable rate range is determined as if the employee held the current GS position of record (including the grade in which pay is being set) at that time and place.

Since the claimant's USPS rate was earned in 2008, the highest applicable rate range is the GS-14 rate range on Salary Table 2008-DCB (locality pay area of the Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA) (DC locality pay table).

Step B: Identify the lowest step rate in that range that was equal to or higher than the HPR (or the step 10 rate if the HPR exceeded the range maximum).

The lowest step in the range that is equal to or greater than the USPS HPR (\$89,445), was GS-14, step 1, (\$98,033) on the 2008 DC locality pay table.

Step C: Convert the step rate identified in step B to a corresponding rate (same step) on the current highest applicable rate range for the employee's current GS position of record and official worksite. That step rate is the employee's MPR of basic pay.

The GS-14, step 1, rate is \$105,211 on the 2011 DC locality pay table.

Thus, the maximum rate of pay the claimant could have been offered based on his USPS rate upon his transfer to OPM was GS-14, step 1 (\$105,211).

However, the claimant transferred to his OPM GS position from an NSPS position. Section 9901.372, 5 CFR, which covered conversion or movement out of the NSPS pay system on May 8, 2011, must be applied in setting the claimant's pay upon transfer to OPM. As stipulated in 5 CFR 9901.372(a)(1), when an NSPS employee is converted or moved to a GS position, a GS virtual grade and rate is established for the NSPS employee so that the employee is treated as a GS employee in applying GS pay-setting rules. Department of Defense (DOD) Instruction 1400, Civilian Personnel Management, Subchapter (SC) 1911, Conversion into the National Security Personnel System, must be used in the virtual grade determination process. Following are the steps applicable to the claimant's movement, i.e., transfer resulting in a change in position, from a NSPS YA-2 position to a GS-14 position under 5 CFR 9901.372:

1. Under SC 1911, the YA-2 pay band encompasses GS grades 9 through 13.

2. Compare the claimant's NSPS adjusted salary (\$102,198) to the step 4 rates of the GS grades encompassed in the band using the highest applicable GS pay table. In this case, the highest applicable GS pay table is the DC locality pay table because the claimant's NSPS position is located in the DC locality pay area.
3. Compare the claimant's NSPS adjusted rate (\$102,198) to the step 4 rate for grades GS-9 through GS-13, starting with the highest GS grade (GS-13).
4. Since the claimant's adjusted NSPS salary (\$102,198) exceeds the GS-13, step 4, DC locality rate (\$97,936), there is no need to compare to the other GS grades in the pay band.
5. Therefore, the virtual GS grade is GS-13.
6. Once the virtual GS grade has been established, a virtual GS rate is set (before any pay related action that would take effect on the date of the claimant's movement out of NSPS).
7. If the claimant's NSPS adjusted rate of pay (\$102,198) can be accommodated within the virtual GS-13 rate range, the NSPS virtual rate becomes the claimant's virtual GS rate of pay. The NSPS adjusted rate of pay can be accommodated within the GS-13 rate range for the salary table that applies to the DC area.
8. Determine the claimant's GS-13 virtual base rate; i.e., excluding DC locality pay of 24.22 percent.
$$\begin{aligned} \$102,198 / 1.2422 \text{ DC rate} &= \$82,272 \\ \text{GS-13 virtual base rate} &= \$82,272 \end{aligned}$$
9. The virtual GS grade (GS-13) indicates the type of pay action to process. Since the claimant is moving into a GS-14 position, it is a promotion.
10. Increase the GS-13 virtual base rate (\$82,272) by two within-grade increases (\$2,389 x 2), which equals \$87,050.
11. Apply the DC locality payment. $\$87,050 \times 1.2422 = \$108,134$
12. The highest applicable rate range for the GS-14 position after promotion is the GS-14 locality rate range in the DC locality rate schedule. The lowest step rate in that range that equals or exceeds \$108,134 is GS-14, step 2 (\$108,717). That step rate is the payable rate of basic pay upon promotion.

It is well settled by the courts that a claim may not be granted based on misinformation provided by agency officials. Payments of money from the Federal Treasury are limited to those authorized by statute, and erroneous advice or information provided by a Government employee cannot bar the Government from denying benefits which are not otherwise permitted by law. *See Office of Personnel Management v. Richmond*, 496 U.S. 414, *rehearing denied*, 497 U.S. 1046,

111 S. Ct. 5 (1990); *Falso v. OPM*, 116 F.3d 459 (Fed.Cir. 1997); and 60 Comp. Gen. 417 (1981). Therefore, the claimant may not rely on the OPM's erroneous job offer of GS-14, step 4, to support his claim since the offer was contrary to controlling regulation.

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*, 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 the agency acted in an unlawful manner when OPM failed to set his rate of pay at GS-14, step 4, upon his transfer to OPM. Therefore, the claim is denied.

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.