

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

Claimant: [name]

Organization: U.S. Department of Veterans Affairs
Austin, Texas

Claim: Pay setting

Agency decision: Denied

OPM decision: Denied

OPM file number: 13-0021

/s/ Damon Ford for

Robert D. Handler
Classification and Pay Claims
Program Manager
Agency Compliance and Evaluation
Merit System Accountability and Compliance

3/5/14

Date

The claimant transferred from a non-General Schedule (GS) position with the Space and Naval Warfare Systems Center, Science and Technology Reinvention Laboratory (SSC STRL) in Stuttgart, Germany, to a GS-13 position with the U.S. Department of Veterans Affairs (VA) in Austin, Texas. His previous position was covered under the SSC STRL demonstration project which encompasses GS grades within pay bands. The claimant believes his pay in the new position should be set no lower than GS-13, step 6, and requests his pay be adjusted accordingly retroactive to his entry into the new position. We received the claim request on October 10, 2012, and the claim administrative report on May 31, 2013. For the reasons discussed herein, the claim is denied.

The claimant previously occupied an NO-2210-04 position with the SSC STRL. After he accepted a promotion to a GS-2210 Information Technology Management position with the VA, the gaining agency set his pay at the GS-13, step 3, rate. The claimant subsequently requested that the VA's human resources officials reconsider their pay setting determination. On November 5, 2012, the agency determined the claimant's pay was instead properly set at GS-13, step 4, and this rate was made retroactive to his June 3, 2012, start date with VA.

The VA's administrative report to OPM explains:

We feel that our determination of GS-13, step 4, is accurate and in compliance with regulations and law. The determination was made based on his losing and gaining positions, but the crux of the matter was that [the claimant] felt it should have been based on his retained rate, versus the conversion grade and step of GS-12, step 8. In addition, there were two "SSC STRL Exit Information Sheets" that provided the conversion to General Schedule information. [The claimant] provided the one that indicated a retained rate, i.e. step 00. Documentation does appear to be misleading in that while the losing agency indicated that the determination would be made by the gaining facility, information provided to [the claimant] by them indicated that he might be entitled to a GS-13, step 6. But his losing agency provided a document from May 2012 which indicated it was a GS-12, step 8. In addition, email traffic from the losing agency will show that they corrected the initial determination of step 00 to step 8. As such, our determination had been (and continues to be) based on GS-12 step 8 with promotion to GS-13, and the result was a step 4.

When an employee moves, without a break in service, to a GS position from a non-GS pay system under chapter 47 of title 5, United States Code (U.S.C.), or similar provision of law¹, and that system provides that an employee will be converted to GS-equivalent rates immediately before leaving the non-GS pay system, the employee is considered a GS employee in applying the pay-setting provisions of part 531, subpart B of title 5, Code of Federal Regulations (CFR). See 5 CFR 531.217.

The claimant's SSC STRL Exit Information Sheet shows he occupied a NO-04 position with basic pay set at \$81,417. The exit information sheet further explains the conversion-out rule for setting pay upon movement to a GS position, stating that upon an employee's exit from the

¹ The SSC STRL demonstration project is conducted under the authority of section 1105 of the National Defense Authorization Act for FY 2010 (Public Law 111-84, October 28, 2009), which is similar to 5 U.S.C. chapter 47.

demonstration project “a GS grade and step is determined for the employee as if the GS converted grade and rate were actually in effect immediately before the employee left the demonstration project.”

In his claim request, the claimant asks OPM to apply the pay-setting provisions of 5 CFR 536.304(c) for redetermining pay retention entitlement at the time of change in position. The record includes two undated exit information sheets with different converted grades reported, one showing GS-12, step 00 (which indicates a retained rate), and the other GS-12, step 8. The losing agency initially provided an exit information sheet showing the claimant’s converted grade as GS-12, step 00; however, a string of emails between the losing and gaining agencies indicate that the exit information sheet was later revised to reflect the converted grade as GS-12, step 8. The claimant did not submit any information or documentation refuting that his SSC STRL exit information sheet was later revised to reflect step 8, instead of step 00.

Moreover, after careful review of the SSC STRL demonstration project’s rules for converting an employee’s demonstration project rate of pay to a GS rate (*see* STRL Personnel Demonstration Project, 75 Federal Register 163 (August 24, 2010), pp 52161), the losing agency correctly set the claimant’s converted rate as GS-12, step 8. In accordance with project rules, if an employee is receiving a retained rate under the demonstration project, the employee’s GS-equivalent grade is the highest grade encompassed in his or her pay band level. The NO-04 pay band encompasses GS-11 and GS-12. As such, the claimant’s GS-equivalent grade was set at GS-12. Once the GS-equivalent grade was determined, the agency determined his GS-equivalent rate of pay using the special rate table 99AF for GS-2210 positions assigned to foreign areas, as the highest applicable GS rate range. In determining the GS-equivalent rate of pay, the claimant’s basic pay under the demonstration project (\$81,417) was compared to the established GS-12 rates on the 99AF table. His demonstration rate of pay falls between steps 7 (\$79,561) and 8 (\$81,771) of the GS-12 grade level on the 99AF special rate schedule. Since the rate must be set at the higher step, we conclude the claimant’s GS-equivalent grade and rate of pay is GS-12, step 8. Once an employee can be placed on a step rate within the applicable GS pay schedule, pay retention no longer applies. The GS-equivalent grade and rate of pay is used to determine the pay setting action that will be applied upon movement into the new GS position. In this case, the claimant was moving to a GS-13 position. Under the GS pay administration rules (5 CFR 531.203), this move is defined as a promotion and the GS promotion rules are applied. The promotion rules for retained rates are not applicable because the employee is no longer under pay retention.

Since the losing agency did not convert the claimant’s position out of the demonstration project in a retained rate status, we cannot apply the 5 CFR 536.304(c) pay-setting provisions for pay retention entitlement as requested by the claimant. Instead, we used the claimant’s converted rate to apply the following provisions under 5 CFR 531.214 for setting pay upon promotion using the standard method²:

² As provided in 5 CFR 531.214(b), when an employee’s official worksite is changed to a new location where different pay schedules apply, the agency must convert the employee to the applicable pay schedule(s) and rate(s) of basic pay for the new official worksite based on the employee’s position of record before promotion as provided in 5 CFR 531.205 before processing a simultaneous promotion action. After the geographic conversion, the claimant is covered by

Step A: Apply the geographic conversion rule in 5 CFR 531.205 to determine the employee's rate(s) and range(s) of basic pay based on the employee's position of record before promotion and the new official worksite. Use the resulting rate(s) of basic pay as the existing rate(s) in effect immediately before promotion in applying steps B and C. Based on his position before promotion, the pay schedules applicable to the claimant in Austin, Texas, would be the underlying General Schedule and the locality pay area of rest of United States (RUS).

Step B: Identify the employee's existing GS rate in the grade before promotion, and increase the rate by two GS within-grade increases for that grade. Using the underlying General Schedule, the claimant's existing GS-12, step 8, rate is increased by two within-grade increases, which produces the GS-12, step 10, rate (\$78,355).

Step C: Determine the payable (highest) rate of basic pay for the step or rate determined in step B by applying any locality payment or special rate supplement applicable to the given grade, based on the employee's position of record before promotion and official worksite after promotion. The highest payable rate of basic pay for GS-12, step 10, is the corresponding GS-12, step 10, rate for the locality pay area of RUS (\$89,450).

Step D: Identify the highest applicable rate range for the employee's position of record after promotion and find the lowest step rate in that range that equals or exceeds the rate determined in step C. This is the employee's payable rate of basic pay upon promotion. In determining the rate in the GS-13 rate range of the RUS pay schedule (the highest applicable rate range) that equals or exceeds the rate determined in step C (\$89,450), the claimant's payable rate upon promotion falls between steps 3 (\$87,278) and 4 (\$90,005). Since the higher step is assigned, we find the agency's setting of the claimant's pay at GS-13, step 4, proper under the pay-setting provisions of 5 CFR 531.205 and 5 CFR 531.214.

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). To support his pay miscalculation assertions, the claimant states he previously declined a job from another agency offering to set his pay at the GS-13, step 5, rate, and that a human resources official from his losing agency and the program support assistant from his current VA organization had calculated his pay at a rate higher than the final determination made by VA's Central Office. However, the claimant may not rely on a previous job offer and informal advice from others to support his claim when the information is contrary to controlling regulations.

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.

the same pay schedules before and after promotion (the General Schedule and the RUS pay schedule). Therefore, as provided in 5 CFR 531.214(d)(2), the standard method applies.