

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

**Claimant:** [name]

**Organization:** Office of Small Business and  
Civil Rights  
U.S. Nuclear Regulatory Commission  
[city & State]

**Claim:** Severance Pay

**Agency decision:** N/A

**OPM decision:** Denied; Barred by Res Judicata

**OPM file number:** 13-0057

/s/ Linda Kazinetz for

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

1/7/14

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Date

The claimant was formerly employed as a Civil Rights Specialist, GG-160-14, with the U.S. Nuclear Regulatory Commission (NRC), in [city & State]. The claimant seeks severance pay denied by the NRC on August 6, 2013. The U.S. Office of Personnel Management (OPM) received the claim request on August 12, 2013, and additional information from the agency at our request on August 15, 2013. For the reasons discussed herein, the claim is barred by res judicata.<sup>1</sup>

In his August 12, 2013, claim request, the claimant asserts he was involuntarily separated and, therefore, is entitled to receive severance pay: “For clarification, the day i [sic] was given the draft notice of removal I was immediately stripped of my badge and escorted off the premises by security personnel. If that is not involuntary separation I don’t know what it is identified.” The record shows he seeks severance pay in the amount of \$108,000.00. The claimant states he was threatened with removal after he filed an equal employment opportunity (EEO) complaint against his supervisor in April 2011, which he subsequently amended “for reprisal.” He states that during EEO settlement discussions:

**I was told that retaining my job was not an option.”** (emphasis in original).

I agreed to compensation; withdraw my EEO complaint, placed on LWOP [leave without pay] for 6 months, and resign from my position on November 17, 2012. The Agency negated the removal issue after the settlement dated May 2, 2012.

\* \* \* \* \*

On October 2, 2012, I sent an email to the Agency regarding my severance pay after being forced to involuntary [sic] resign my position on November 17, 2012 (e.g., **retaining my job was not an option**). (emphasis in original).

The claimant states that on October 15, 2012, NRC responded to his email, stating: “...you would not be eligible for severance pay under 5 USC [United States Code] 5595, nor would you be eligible for a discontinued-service retirement [DSR], because under the terms of the settlement agreement between you and the agency, you agreed to voluntarily resign.” He further states that on October 22, he requested the agency revisit the severance pay issue, citing title 5, Code of Federal Regulations, section 550.706, which states in pertinent part:

(a) An employee who resigns because he or she expects to be involuntarily separated is considered to have been involuntarily separated if the employee resigns after receiving—  
(1) Specific written notice that he or she will be involuntarily separated by a particular action effective on a particular date; or

The claimant states he was told by the agency on October 26, 2012, he did not meet the above cited criterion because “**at the time you resigned, you had not been issued a written notice that you would be separated on a particular date**.” (emphasis in original)

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<sup>1</sup> The claimant’s earlier November 12, 2012, claim request, received on November 19, 2012, was declined since it did not contain evidence of a final agency-level denial as required under section 178.102(a) if title 5, Code of Federal Regulations.

In its August 6, 2013, letter responding to the claimant's August 1, 2013, severance pay claim, the agency states:

Given that you entered into a settlement agreement with the Agency on May 2, 2012, the validity of which was recent [sic] upheld by the Equal employment Opportunity Commission (EEOC) Office of Federal Operations (OFO), your claim for severance pay is denied....

\* \* \* \* \*

In its decision (attached), OFO thoroughly examined the provisions of 5 C.F.R. § 550.706 in light of the facts of this case and your previous request for DSR, and found that you had never been provided a specific notice of termination with a specific effective date. OFO thus concluded that you did not satisfy the regulatory requirements and were not eligible for DRS (or severance pay).

The May 9, 2013, OFO claim decision reflects the above facts asserted by the agency, found the claimant had not been coerced into signing the settlement agreement, found the settlement to be valid, and concluded the claimant "has not shown that he meets the requirements under § 550.706."

As discussed in *Stearn v. Department of the Navy*, 280 F.3d 1376 (Fed. Cir 2002):

Under the doctrine of res judicata, a final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in that action. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 69 L. Ed. 2d 103, 101 S. Ct. 2423 (1981) . . . The doctrine serves to "relieve parties of the cost and vexation of multiple law suits, conserve judicial resources, and . . . encourage reliance on adjudication." *Allen v. McCurry*, 449 U.S. 90, 94, 66 L.Ed. 2d308, 101 S.Ct. 411 (1980).

Since EEOC has rendered a judgment on the merits of this claim, the claim before us is barred by res judicata, which precludes relitigation of issues that have already been decided by an administrative body of competent authority. Therefore, we may not decide 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.