

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

**Claimant:** [name]

**Organization:** [agency component]  
Fort Richardson  
Department of the Army  
Fort Richardson, Alaska

**Claim:** Refund of Tax Levy and Child Support

**Agency decision:** N/A

**OPM decision:** Denial; Lack of Jurisdiction

**OPM contact:** Robert D. Hendler

**OPM file number:** 06-0058

/s/ Dan G. Blair

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Dan G. Blair  
Deputy Director

12/4/2006

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Date

The claimant is employed in a [position] in the [agency component], Fort Richardson, Department of the Army, at Fort Richardson, Alaska. He requests the Office of Personnel Management (OPM) direct his payroll provider, the Defense Finance and Accounting Service (DFAS), make him whole; refund him \$1,045.90 for failing to properly handle a tax levy; refund him \$142.07 for overpayment of child support; and that DFAS “be responsible for any taxes that might come due as a result of the refund.” We received the claim request on June 29, 2006. For the reasons discussed herein, we do not have jurisdiction to consider this claim.

The claimant describes a series of events which led to his receiving a notice from DFAS-Denver, in Denver, Colorado, that they had received a Notice of Levy from the United States Internal Revenue Service (IRS) for back taxes. He states he requested, and the IRS issued, three “Release of Levy” documents to resolve the levy. The claimant asserts:

DFAS acknowledged that they had made a mistake by not closely reviewing the documents that were sent to them... They stated they were too busy with reorganization and they would not have time to go into the computer program to change the pay out.

The claimant also states DFAS misapplied an April 19, 2006, “Notice to Withhold Income” issued by the State of Alaska’s Child Support Division (CSSD). He asserts DFAS withheld 65 percent of his disposable income rather than the 40 percent maximum for those whose principal place of employment is Alaska. The claimant states DFAS’s correction was affected by its processing procedures and, as a result, DFAS withheld 65 percent of his disposable income on May 25, 2006, and his deduction was returned to 40 percent on May 27, 2006.

Part 178 of title 5, Code of Federal Regulations, concerns the adjudication and settlement of claims for compensation and leave. Section 178.102 describes the procedures for submitting claims as well as the documentation that should accompany a claim. Paragraph (a)(3) of section 178.102 specifies this documentation should include a copy of the final written agency denial of the claim. Therefore, paragraph (a)(3) denotes that an employing agency already has reviewed and issued an initial decision on a claim before it is submitted to OPM for adjudication. In the instant case, the documentation submitted does not include any decision, and it is not clear whether the claimant has filed a formal written claim with his employing agency, Department of the Army. OPM may decline to review a claim where the employing agency has not issued a final written decision denying the claim. In addition, however, OPM’s response to this request can be rendered on other jurisdictional grounds, as follows.

Claims seeking reimbursement for overpayment of Federal income taxes or State and local taxes clearly are not covered under OPM’s compensation and leave claims jurisdiction set forth in 31 U.S.C. § 3702(a)(2) because recovery of the overpayment is a matter between the employee and the Internal Revenue Service or the State or local government. *See Matter of Sergeant First Class James L. Dunlap* (B-224946, September 25, 1987). Consequently, this part of the claim must be dismissed for lack of jurisdiction.

It appears from the file that the initial deduction for child support resulted from DFAS’s reliance on specific monetary amounts stated in the garnishment order and amounting to 65 percent of the

claimant's aggregate disposable income. This limit is set forth in 5 CFR § 581.402(a) as the maximum amount of aggregate disposable income subject to garnishment for employees making current and past due support payments. Section 581.402(a), however, also provides that the specific limits set forth in the OPM regulation do not apply where a lower maximum garnishment limitation is set forth in State or local law. In the instant case, the garnishment order further specified that, if the employee's principle place of employment is in Alaska, the total amount withheld cannot exceed 40 percent of the employee's aggregate disposable weekly earnings. Thus, it appears that, for the first earning period subject to the garnishment order, DFAS should have deducted 40 percent rather than 65 percent of the claimant's aggregate disposable earnings. The governing statute, 42 U.S.C. § 659, specifies in relevant part:

(a) Notwithstanding any other provision of law . . . , moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States . . . to any individual, including members of the Armed Forces of the United States, shall be subject, in like manner and to the same extent as if the United States . . . were a private person, to withholding in accordance with State law . . . and to any other legal process brought, by a State agency administering a program under a State plan approved under this part or by an individual obligee, to enforce the legal obligation of the individual to provide child support or alimony.

Thus, 42 U.S.C. § 659(a), is a limited waiver of sovereign immunity whereby the United States, as an employer, has consented to make itself and certain monies, due and payable by the United States to its employees, subject to legal process on the state or local level for the enforcement of Federal employees' child support and alimony obligations. *Millard v. United States*, 916 F. 2d 1 (Fed. Cir. 1990); *Young v. Young*, 547 F. Supp. 1 (W.D. Tenn. 1980).

In the instant case, the claimant's servicing payroll provider erred for one pay period in withholding more than the amount specified in the in the Order/Notice to Withhold Income for Child Support. Our jurisdiction to correct this error is unsupportable for two reasons. The provisions of 31 U.S.C. § 3702(a)(2) are intended to provide recourse to challenge Federal agency decisions regarding entitlement to compensation or, in the case of claimant's who have been issued a notice of indebtedness, a means to challenge the propriety of the underlying debt. The provisions of 31 U.S.C. § 3702(a)(2) do not confer authority on OPM to determine the underlying propriety of child support determinations enforced under 42 U.S.C. § 659(a). Such matters are under the jurisdiction of State courts and agencies administering child support programs. The provisions of 31 U.S.C. § 3702(a)(2) also do not vest OPM with authority to order a State agency to disgorge monies they may have erroneously collected based on a Federal entity's processing error as in the instant case. In submitting his claim, the claimant did not report what steps, if any, he took to determine whether the CSSD is holding the \$142.07 or has applied it as partial payment toward his support obligations. We also note the copies of the garnishment orders provided by the claimant indicate that he owed current and past due child support payments and alimony payments. It is not clear what the State of Alaska did with the \$142.07 overpayment. For these reasons, we decline to assert jurisdiction in the matter.

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.