

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

Claimant: [name]

Organization: [division]
[installation]
Department of the Air Force
[installation & State]

Claim: Waiver of Indebtedness for Post
Allowance and Living Quarters
Allowances

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 06-0047*

[Erroneously issued as duplicate file number 06-0043]

/s/ for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability

8/1/2007

Date

In her letter of July 7, 2006, which the U.S. Office of Personnel Management (OPM) received on July 19, 2006, the claimant asks OPM to “accept this claim under 5 U.S.C. 5922(b) for waiver of repayment of debt in the amount of \$1,778.24.” The claimant occupied a [position] during the period of the claim when she was employed by the Department of the Air Force (AF) at RAF Alconbury in the United Kingdom. We did not receive the agency administrative report until June 4, 2007. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The record shows the claimant was advised of her indebtedness due to an overpayment of \$1,438.60 by the Defense Finance and Accounting Service (DFAS), Pensacola, in its letter of April 22, 2005. A July 9, 2005, letter from DFAS, Charleston, advised the claimant of her indebtedness for an overpayment of \$339.64. The record includes a May 22, 2006, letter from DFAS, Denver, advising the claimant she was ineligible for a waiver, indicating she could contact the:

...head of your employing agency [who] may make a determination that an employee does not have to refund the LQA overpayment...if it is shown that the recovery would be against equity and good conscience or against the public interest. This claim would ultimately be decided by the Office of Personnel Management (OPM). OPM has the authority over all compensation and leave claims for Federal employees.

As a result of legislative and executive action, the authority to waive overpayments of pay and allowances now resides with the heads of agencies, regardless of the amount. See the General Accounting Office Act of 1996, Pub. L. No. 104-316, 110 Stat. 3826, approved October 19, 1996; and the Office of Management and Budget (OMB) Determination Order dated December 17, 1996. Neither Pub. L. No 104-316 nor OMB's Determination Order of December 17, 1996, authorizes OPM to make or to review waiver determinations involving erroneous payments of pay or allowances. Therefore, contrary to what was implied by DFAS, Denver in its May 22, 2006, letter to the claimant, OPM does not have jurisdiction to consider, or issue a decision on, the request for a waiver of a claimant's indebtedness to the United States. In addition to seeking a waiver, the claimant stated her request was due, in part, to “obvious errors in the audit.” Therefore, we accepted the claim for processing based on the claimant’s clear indication she disagreed with the amount of her indebtedness which is reviewable by OPM under the provisions of 31 U.S.C. § 3702(a)(2).

Our request to DFAS for an agency administrative report (AAR) under the provisions of 5 CFR § 178.102(c) was based on the premise that DFAS, by issuing letters of indebtedness, meant a final agency denial has been issued on this matter, as required by 5 CFR § 178.102(a)(2) and (b), thereby making the claim ripe for settlement by OPM. However, DFAS did not have the full claim record and, as a result, we contacted the claimant’s former servicing human resources office which, in its May 4, 2007, AAR states:

We have reviewed this claim in its entirety but are unable to substantiate all of DFAS debt claims (see attachment 1 for response to the debt of \$1438.30).

3. On 9 July 2005 [claimant] received a further debt letter from DFAS for 14 days of Post Allowance paid on PPE 22 January 2005 in the amount of \$339.64. Our records indicate this debt is valid. [Claimant’s] Post allowance was

terminated on 4 January 2005 IAW Department of State Standardized Regulation Chapter 200 paragraph 224.1a based on her temporary lodging prior to returning to USA. Any Post allowance paid after 4 January 2005 is to be collected as a valid debt.

5. It is this offices [sic] opinion that the debt of \$1438.60 be reduced to \$664.44 and added to the valid debt of \$339.64, giving an actual total of \$1004.08 (repayment of 1 pay period of LQA and Post allowance paid to employee on PPE 22 January 2005 when she was not longer eligible.

On June 8, 2007, OPM e-mailed a copy of the AAR form the AF to the claimant and requested comment on the AAR within 20 days. In her e-mail response that same day, the claimant stated: "The response from USAFE is an acceptable evaluation based on the available support documentation."

The provisions of 31 U.S.C. § 3702(a)(2) are intended to provide recourse to challenge Federal agency decisions regarding entitlement to compensation. Regulations concerning the adjudication and settlement of claims for compensation and leave (part 178 of title 5, Code of Federal Regulations (CFR)) require a final agency-level denial to be issued (see 5 CFR § 178.102(a)(3) and (b)) before it is submitted to the OPM for adjudication. However, the instant case does not appear to challenge such a denial since it appears the claimant's employing agency, the AF, never received a claim on this matter from the claimant and, therefore, never issued a claim denial. We take the claimant's response to the AF's AAR to mean she no longer disagrees with the amount of the debt at issue, thereby removing her situation from OPM's potential claims settlement purview. Therefore, because the issue of waiving the claimant's indebtedness is vested in her employing agency, the AF, the claim must be denied for lack of jurisdiction.

We note the claimant, in her claim request, asked for changes in DFAS form letters and stated she believed the sequence of events since January 22, 2005, "show a pattern of misinformation, deficient audit procedures, and a complete lack of willingness to communicate with customers on the part of DFAS." In adjudicating a claim under the provisions of 31 U.S.C. § 3702(a)(2), our responsibility is to make our own independent decision about claimant's entitlement to compensation. We must make this decision solely by comparing the facts in the case to criteria in Federal laws, regulations and other Federal guidelines. Therefore, the claimant's statements would be considered only insofar as they are relevant to our making that comparison.

This settlement is final. No further administrative review is available within the Office of Personnel Management. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States court.