

Date: May 22, 2002
Claimant: [claimant]
File Number: 02-0015
OPM Contact: Deborah Y. McKissick

The claimant is a Supervisory Applications Clerk (OA), GS-0986-06, with the [agency]. In accordance with 5 CFR 178.103, an attorney (claimant's representative) filed a compensation claim, dated November 28, 2001, with the Office of Personnel Management (OPM) on behalf of the claimant. OPM received the compensation claim on January 31, 2002, and the agency administrative report on March 13, 2002. The claimant's representative requested and was granted an opportunity to respond to the agency administrative report, and OPM received the response on April 23, 2002. The claimant is requesting back pay for incorrect pay setting. For the reasons discussed herein, the claim is granted.

The claimant's representative stated that the agency sent the claimant an Offer Letter, dated May 21, 1997, to confirm the claimant's appointment to a Supervisory Applications Clerk (OA) GS-0986-06, step 10 position at the salary of \$31,183 per annum. The claimant accepted the position. The claimant's representative noted the claimant was previously a grade 6 employee under OC pay plan when she resigned from the Department of the Treasury in February of 1997. The claimant's salary at that time was \$29,027 per annum, which included \$26,293 in basic pay and \$2,734 in locality pay.

The claimant's representative stated that the claimant discovered, after she started to work with the agency, that she was not being paid in accordance with the terms of the Offer Letter, but at Grade 06, step 4 at a salary of \$26,833. The claimant's representative believes the claimant's salary was improperly lowered "in contravention of the written Offer Letter upon which she relied in accepting employment;" and "in violation of proper pay setting guidelines."

The agency offered the claimant an appointment to a position in a special salary rate. In the agency's response, the agency stated that the pay setting examples from OPM determines basic salary without regard to additional types of pay, such as locality pay. The agency stated that it matched as close as possible the claimant's ending salary with her former agency - in comparison with her previous base salary of \$26,293. The agency acknowledged that the New York Administrative Office gave the claimant erroneous information, but further stipulated that the office did not have authority to make final determinations on pay.

The claimant entered an initial appointment with the agency to a position under a special salary rate schedule on June 8, 1997. The agency stated that all applicable guidelines regarding pay setting were followed when setting the claimant's pay. In a letter, dated November 15, 2001, to the claimant's representative, the agency wrote,

In 1997 and 1998 the New York City Special Salary Table 0012 used to set the GS-06 salary was higher than that of the New York Locality Table.

Section 530.306(c) of title 5, Code of Federal Regulations, provides guidance for initial appointments to a position under a special salary rate schedule, and it states,

The agency shall determine the rate of basic pay for an individual receiving an initial appointment (including an appointment after a break in service of at least 1 workday) to a position to which a special salary rate schedule applies under the regulations governing the pay system under which the employee is appointed without regard to the special salary rate schedule, and shall use the employee's rate at the corresponding step or rate in the special salary rate schedule.

According to 5 CFR 531.606(a), an employee is entitled to the greater of: (1) the special salary rate of his/her grade and step, or (2) the locality rate for his grade and step. If the locality rate is higher, the employee receives the difference between his special salary rate and the locality rate.

5 CFR § 531.203(c) describes the process to determine the claimant's maximum rate of basic pay. Our analysis of the claimant's situation finds the following procedures for determining the pay setting for the claimant:

First step: Compare the employee's highest previous rate of basic pay with the rates of basic pay for the GS-06 grade level that were "in effect at the time the highest previous rate was earned" for the 06 grade level.

Highest previous rate of basic pay = \$26,293.00

Second step: Identify the lowest step in the GS-06 rate range, for which the rate of basic pay was equal to or greater than the employee's highest previous rate at the time the highest previous rate was earned. *If the employee's highest previous rate was greater than the maximum rate for the grade in which pay is being fixed, the maximum rate of basic pay that may be paid to the employee is the maximum rate for that grade.*

Maximum rate of basic pay = GS-06, step 8

The claimant's previous rate was between GS-06, step 7 at the salary of \$26,108.00 and GS-06, step 8 at the salary of \$26,833.00.

Third step: Review the General Schedule Salary Table Number 97-GS to establish the scheduled rate of basic pay for the GS-06, step 8

\$26,833.00

Fourth step: Review the Special Salary Rate Table Number 0012 to locate the corresponding step or rate identified in the third step

\$29,733.00

Fifth step: Review the Locality Pay Salary Table Number 97 to locate the corresponding step or rate identified in the third step

\$29,288.00

Sixth step: Compare the rates identified in the fourth and fifth steps to determine the highest rate to which the employee is entitled.

Supervisory Applications Clerk (OA), GS-0986-06, step 8 = \$29,733.00 under the Special Salary Rate Table.

OPM does not conduct adversary hearings, but settles claims on the basis of the evidence submitted by the claimant and the written record submitted by the government agency involved in the claim. 5 CFR 178.105; *Matter of John B. Tucker*, B-215346, March 29, 1985. The payment of the highest previous rate is discretionary with the agency. *See Barbara J. Cox*, 65 Comp. Gen. 517 (1986). The agency stated that it matched as closely as possible the claimant's ending base salary at a salary of \$26,833, which was the base salary on the 1997 General Schedule Table No. 97-GS for a GS-06, step 8. Since the special salary rate was higher than the locality rate, the claimant receives the greater, which in this case was the special salary rate. The claimant is not entitled to locality pay when receiving special salary pay. Therefore, the claimant's salary should have been \$29,733.00 at the time she was reinstated. Based on the above analysis, the claimant is owed back pay with interest from June 8, 1997 to the present period. Hence, the claim is granted.

The agency should pay the claimant a lump-sum payment for the back pay with interest as described in 5 CFR § 550.805 and 5 CFR § 550.806. If the claimant believes that the agency has computed the amount incorrectly, she may file a new claim with this office.

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.

Distribution

[claimant's name and address]

[claimant's attorney]

[agency's name and address]

[agency's name and address]