



United States
**Office of
Personnel Management**

Washington, DC 20415

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

Claimant: [name]

Organization: U.S. Citizenship and Immigration
Services
U.S. Department of Homeland Security
[city & State]

Claim: Claim for Additional Back Pay and
Interest Due to Disagreement With
Agency Calculations

Agency decision: Denied

OPM decision: Denied

OPM contact: Robert D. Hendler

OPM file number: 04-0041

/s/ for

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

5/9/2006

Date

The claimant previously filed a compensation claim with the Office of Personnel Management (OPM). The decision (File Number 02-0015) granted the claim. The settlement decision found that the U.S. Department of Justice, Immigration and Naturalization Service, now a component of the U.S. Department of Homeland Security, incorrectly set the claimant's pay, and that the claimant was due back pay and interest. We received the claim on March 24, 2004. However, we did not receive the payroll documents from the agency necessary to settle the claim until March 14, 2006. For the reasons discussed herein, the claim is denied.

In her February 24, 2004, letter, the claimant's representative wrote to OPM stating that the agency made several payments to the claimant, but "it does not appear that the Agency computed the backpay and interest incorrectly and the amount paid was less than it should have been." The representative listed "errors in calculations" providing "For example, the calculation of overtime, the Agency appears to have" and listed a series of pay periods in which she asserted overtime miscalculations occurred, concluding that "These errors alone account for an additional 846.75 hours of overtime overlooked by the Agency."

In her May 17, 2004, letter supplementing her February 24, 2004, letter, the representative reduced the amount of unpaid overtime claimed to 645.5 hours and articulated five calculation errors constituting the claim. We will address each calculation separately.

- (1) The claimant worked 95 hours of overtime for pay periods 12/98 through 25/98, but was paid for 65.75 hours, leaving a balance of 29.25 hours.

Records for pay period 11/98 show the claimant had been paid for 29.25 hours of overtime year-to-date. Records for pay periods 12/98 through 25/98 show the earning and payment of 65.75 hours of overtime for a total of 95 hours of overtime worked through the end of pay period 25/98, which is the total number of overtime hours claimed by the representative.

- (2) The claimant worked 170.75 hours of overtime for pay periods 12/99 through 25/99, but was paid for 155.25 hours, leaving a balance of 15.50 hours.

Records for pay period 11/99 show the claimant had been paid for 15.50 hours of overtime year-to-date, and the record shows she had been paid for 170.75 hours of overtime through pay period 24/99, which is the number of overtime hours claimed by the representative.

- (3) The claimant worked 453.25 hours of overtime for pay periods 12/00 through 26/00, but was paid for 350.25 hours, leaving a balance of 143.50 hours.

The pay stub for pay period 11/00 shows the claimant had been paid for 143.50 hours of overtime year-to-date. Pay stubs for the pay periods 12/00 through 25/00 show the earning and payment for a total of 453.25 hours of overtime through pay period 25/00 for a total of 309.75 hours. The pay stub for pay period 26/00 shows a total of 40.50 hours of overtime earned and paid for that pay period, for a total of 350.25 hours. This is the number of hours of overtime for pay periods 12/00 through 27/00 on the agency's pay calculation sheet. Therefore, it appears the claimant was paid for 453.25 hours of

overtime for through pay period 26/00, which is the number of overtime hours claimed by the representative.

- (4) The claimant worked 200.25 hours of overtime for pay periods 01/01 through 10/01, but was paid for 159.75 hours, leaving a balance of 40.50 hours; and

The pay stub for pay period 01/01 shows the claimant was paid for 60.5 hours of overtime year-to-date, and the pay stub for pay period 10/01 shows the claimant was paid for 200.25 hours of overtime through that pay period. This results in a total of 159.75 hours of overtime for pay periods 01/01 through 10/01, for a cumulative total of 200.25 through pay period 10/01, which is the total number of overtime hours claimed by the representative.

- (5) The claimant worked 416.75 hours of overtime for pay periods 12/01 through 26/01, but did not provide any calculations for overtime worked during that time frame.

The pay stub for pay period 12/01 shows the claimant was paid for 245.75 hours of overtime year-to-date. The pay stub for pay period 01/24 shows the claimant was paid for a total of 399.5 hours of overtime year-to-date. The pay stub for 01/25 shows payment for 9.50 hours of overtime, and the pay stub for pay period shows payment for an additional 8.25 hours of overtime, for a total of 17.75 hours which, when added to the 399.50 hours, results in a total of 417.25 hours of overtime, which is the total number of hours of overtime claimed by the representative. We reviewed the calculation work sheets provided by the agency for pay periods 12/01 through 26/01 showing the claimant was paid for a total of 199.00 hours of overtime. When added to the 218.25 hours of overtime earned and paid for year-to-date on pay stub 11/02, this total 417.25 hours of overtime through pay period 26/00, which is also the total number of overtime hours claimed by the representative.

OPM does not conduct investigations or preside over adversary hearings in adjudicating claims, but relies on the written record submitted by the parties. *See Frank A. Barone*, B-229439, May 25, 1988. Where the record presents a factual dispute, the burden of proof is on the claimant to establish the liability of the United States, and where the agency's determination is reasonable, OPM will not substitute its judgment for that of the agency. *See, e.g., Jimmie D. Brewer*, B-205452, March 15, 1982, as cited in *Philip M. Brey*, B-261517, December 26, 1995. Where the written record presents an irreconcilable dispute of fact between a Government agency and an individual claimant, the factual dispute is settled in favor of the agency, absent clear and convincing evidence to the contrary. 5 CFR 178.105; *Matter of Staff Sergeant Eugene K. Krampotich*, B-249027, November 5, 1992; *Matter of Elias S. Frey*, B-208911, March 6, 1984; *Matter of Charles F. Callis*, B-205118, March 8, 1982.

We find the pay stubs and payroll calculations provided by the claimant's representative do not support her assertions. Based on the agency pay stubs and calculation sheets forwarded to us by the claimant's representative and the calculation sheets for pay periods 12/01 through 26/01 sent to us by the agency, we find the claimant has been paid for the overtime hours at issue in this claim.

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.