

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

Claimant: [name]

Organization: [agency component]
Department of Defense Schools
(DoDDS)
Department of Defense

Claim: Waiver of indebtedness for
lump sum annual leave payment

Agency decision: Denied

OPM decision: Denied; Lack of jurisdiction

OPM file number: 09-0029

//Judith A. Davis for

Robert D. Hendler
Classification and Pay Claims
Program Manager
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4/22/2009

Date

In his October 27, 2003, letter received by the U.S. Office of Personnel Management (OPM) on December 12, 2003, the Director, [agency component], seeks to forward a claim on behalf of the claimant for lump-sum payment for accumulated and accrued leave on separation. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The agency states the claimant received erroneous payments for said leave for which he was found to be indebted by the servicing payroll office, the Defense Finance and Accounting Service, Charleston (DFAS-CH) in November 1999. The agency states the claimant sent a letter to DFAS-CH In December 1999 requesting waiver of erroneous payment, although he also indicated the debt might not have been correctly calculated. The agency states the request for waiver was denied by the Director, [agency component], on December 12, 2001, and claimant's appeal of that decision was denied by the Defense Office of Hearings and Appeals (DOHA) on April 14, 2003. The agency states:

We considered the DFAS-CH notice of indebtedness to constitute the final agency determination of his claim. In July 2003, [the claimant] inquired as to the procedures for appealing the agency decision of his claim that the amount of the debt was incorrect and insisted that his appeal be submitted. In accordance with this request, we are forwarding [claimant's] claim (enclosed) on his behalf.

Although the Director of the [agency component] exercised his authority under 5 USC [sic] §5584 to deny waiver of amounts determined to have been erroneously paid to [claimant], we determined that, in spite of the fact that [claimant] submitted an application for waiver, he was in fact presenting a claim for such payment, or a counterclaim against the government's demand for repayment....Ultimately, having explained our understanding of the differences between a claim and a request for waiver of erroneous payment, we deferred to [claimant's] election to pursue his appeal of the agency's claim. It is our belief that, where an employee disputes the Activity's determination that he was not entitled to payment (i.e., that the payments were erroneous), final determination of his entitlement must be referred as an appeal of our denial of his claim to OPM, as provided in Section 211(b), of the Legislative Branch Appropriation Act, 1996.

Our December 18, 2003, letter responding to the agency's request declined to accept the request as a claim, advising the agency that if the claimant repays the overpayment but does not believe he should have, the claimant could file a compensation claim to resolve that matter. Responding in a March 26, 2004, letter, the agency stated:

We forwarded [claimant's] case file to your office in reliance on a decision of the Comptroller General [CG] (B-189154, May 8, 1979) that a debtor's action in challenging an offset by asserting his right to the money which has been withheld does constitute a claim against the United States. We respectfully request that you review [claimant's] claim accordingly.

Subsequent contact with the agency on November 9, 2004, revealed the claimant was considering an alternative means of resolving the lump-sum payment dispute and the agency would contact OPM as appropriate. No subsequent contact was forthcoming. However, we will now address the agency's claim referral request to close this matter.

The Comptroller General decision cited by the agency states, in pertinent part:

[W]e have held that a debtor could, if the debt were collected by means of setoff, assert his right against the United States for the alleged amount, and that such action would constitute a claim which could be submitted to our office for adjudication on its merits.

In this decision, the Comptroller General cites a prior decision in which the Comptroller General states: “[A] debtor could, in the event the debt were collected from him by means of off-set, assert a claim against the United States for the amount it alleges it is entitled to, and the claim could be submitted to this Office for adjudication on its merits.” B-184506, October 29, 1975. The decision further states that this process would allow the debtor to pursue the validity of the claim.

The provisions of 31 U.S.C. § 3702(a)(2) are intended to provide recourse to challenge Federal agency decisions regarding entitlement to compensation. As discussed in GAOs Principles of Federal Appropriation Law, Second Edition, Volume III, November 1994 (Redbook) regarding the filing of a claim:

While a simple letter format will generally do the job, it must be clear that a claim is being asserted. The receiving agency should not be expected to engage in interpretation to divine the letter’s intent. A letter making an inquiry or requesting information is not sufficient. B-150008, October 12, 1962.

As defined in West’s Encyclopedia of American Law, edition 2, (2008): “A claim is something one party owes another....A claim also means an interest in, as in a possessory claim, or a right to possession.” As defined in *A Law Dictionary, Adapted to the Constitution and Laws of the United States* (John Bouvier, 1856): “A claim is a challenge of the ownership of a thing which a man has not in possession, and is wrongfully withheld by another.”

In its June 4, 2003, letter to the appellant, the agency advised the claimant he could challenge the “validity of the United States claim” by filing an “appeal” with OPM. The agency stated the “appeal should describe the factual or legal basis for the appeal and state [claimant’s] calculation of the correct amount of debt, if any.” The claimant’s “Appeal (of claim)” submitted by the agency to OPM and related letters of January 5, 2004; October 29, 2004; September 27, 2004, July 25, 2003; and July 10, 2003, do not address the validity of the underlying debt at the heart of this claim request. Rather, the claimant’s “Appeal” explains why the overpayment occurred; e.g., the claimant’s reliance on the advice of his servicing human resources staff, his view that he did not receive documentation to determine the validity of the lump sum payment he received, and citation of CG decisions in support of the claimant’s penultimate request: “For all reasons set forth above, I request that a waiver of the total overpayment be granted.”

The agency’s reliance on the previously cited CG decision to treat the claimant’s “Appeal” as a claim under 31 U.S.C. § 3702(a)(2) is misplaced in that the claimant has not disputed he received an overpayment of funds. The claimant does not challenge the agency’s explanation of how it determined the lump sum payment he received was an overpayment or that the overpayment was erroneously calculated. Therefore, the claimant has not stated a claim for which relief can be granted. Instead, claimant has requested a waiver of his indebtedness for the acknowledged

overpayment.¹ As a result of legislative and executive action, the authority to waive overpayments of pay and allowances now resides with the heads of agencies in which the debt accrued, 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 for another agency's employees involving erroneous payments of pay or allowances. Therefore, OPM does not have jurisdiction to consider, or issue a decision regarding the denial of, a request for a waiver of claimant's indebtedness to the United States. Therefore, review of factors offered in support of granting a waiver is an action outside the scope of OPM's claims settlement authority. Accordingly, the claim must be denied for lack of jurisdiction.

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.

¹ Claimant's appeal of DOHA decision denying the waiver (Claims Case No. 4112605, April 14, 2003) was denied on January, 5, 2005 (Claims Case No. 04112605, January 5, 2005).