## U.S. Office of Personnel Management Office of Merit Systems Oversight and Effectiveness Classification Appeals and FLSA Programs

Phil adel phia Oversight Di vision 600 Arch Street, Room 3400 Phil adel phia, PA 19106-1596

# Declination of Reasonable Offer Decision Under section 5366 of title 5, United States Code

**Appellant:** [appellant's name]

**Position:** Computer Assistant

GS-335-8

**Organization:** Information Center

Customer Assistance Division

Office of the Chief Information Officer

U.S. Army [activity name]

[location]

**OPM decision:** Appeal denied

**OPM decision number:** D-0335-08-01

/s/

\_\_\_\_\_

Robert D. Hendler

Classification Appeals Officer

2/23/01

\_\_\_\_\_

Date

As provided in section 536.302 of title 5, Code of Federal Regulations (CFR), this decision is final. There is no right of further appeal. This decision is subject to discretionary review only under the conditions specified in 5 CFR 536.302(f).

## **Decision sent to:**

[appellant's name] [appellant's address] [name]
Civilian Personnel Officer
Directorate of Civilian Personnel
U.S. Army [activity name]
[location]

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#### Introduction

On October 30, 2000, the Philadelphia Oversight Division of the U.S. Office of Personnel Management (OPM) accepted a declination of reasonable offer appeal from [appellant's name]. He occupies a position currently classified as Computer Assistant, GS-335-8. The appellant works in the Information Center, Customer Assistance Division, Office of the Chief Information Officer, U.S. Army [activity name], [location]. We accepted and decided his appeal under section 5336 of title 5, United States Code (U.S.C.).

#### **General issues**

In his September 19, 2000, letter, the appellant based his appeal on: the travel hardship the offered position would cause, and his belief that he was not qualified for the position. He doubted that it was a valid offer because it did not provide promotion potential to the grade level from which he was initially downgraded. He questioned why he was not offered other GS-9 positions during his two-year period under retained grade. He said that the position is not a reasonable offer as defined in regulation. We must make reasonable offer decisions by applying reasonable offer criteria in Federal regulations and other guidelines, and cannot base our decision on the other issues raised by the appellant. We will consider the information provided by the appellant only to the extent that it helps us determine if he received a reasonable offer as defined in regulation. We have addressed the claimant's comments on matters not germane to this case in separate correspondence.

In reaching our decision, we carefully reviewed all information furnished by the appellant and his agency, including the appeal administrative report and the activity's responses to the appellant's rationale. We conducted a telephone interview with the appellant on February 13, 2001, to clarify statements made in the appeal letter.

## Background

The record shows that the appellant's position was reclassified from GS-10 to GS-8 due to the consolidation of information management at the activity. He was changed to lower grade on May 18, 1997. The appellant was registered in Priority Placement Program R, and the local [activity name] Repromotion Program on that date. On August 1, 2000, the appellant's activity offered the appellant the position of Computer Specialist, GS-334-9, under the activity repromotion policy. The appellant declined the position on September 7, 2000, and his pay retention was terminated on September 9, 2000.

#### **Evaluation**

The regulations applicable in determining if a reasonable offer was made are contained in 5 CFR, part 536, Grade and Pay Retention, Subpart B, Determination of Retained Grade and Rate of Basic Pay; Loss of, or Termination of Eligibility. Section 536.206 of the CFR contains the criteria for a reasonable offer. Section 536.209 contains criteria for the loss of eligibility for, or termination of, pay retention. Subpart C, Miscellaneous provisions, section 536.302 contains the requirements for appealing termination of benefits because of a reasonable offer.

The appellant disagrees with the agency's determination that he declined a reasonable offer. The record shows that the appellant met the filing criteria in 5 CFR 536.302. Therefore, we compare the agency's actions with the remaining criteria to determine whether the agency's offer met all the conditions as required, and was reasonable.

## Criteria of 5 CFR 536.206

Was the offer in writing, and did it include an official position description of the offered position?

The record shows that the activity's offer, dated August 1, 2000, was made in writing and included a copy of the position description. Therefore, this requirement was met.

Was the employee informed that entitlement to pay retention would be terminated if the offer were declined and that the employee could appeal the reasonableness of the offer?

The record shows that the appellant was advised in the August 1, 2000, letter that his pay retention would be terminated if he declined the offer. His acceptance or declination was requested by close of business on August 3, 2000. The activity's letter of August 21, 2000, stated that failure to respond by September 7, 2000, to the offer would be taken as a declination, and that he would be advised of his appeal rights to the U.S. Office of Personnel Management if his pay retention was terminated. While this requirement was not met in the activity's August 1 letter, it was met in the August 21 letter.

Was the offered position of equal or greater tenure than the position creating the entitlement?

The appellant states that since the offered position was not at the GS-10 grade level, this requirement has not been met. However, tenure does not refer to the grade level of the position held prior to placement in a retained grade or pay status. Entitlement to equal or greater tenure means that a career employee cannot be offered less than a permanent position, e.g., a temporary or term position.

During the telephone interview, the appellant stated that he was not sure whether the position he was offered was permanent because management filled it with a term employee after he declined to accept it. Information provided by the agency shows that the position offered was permanent. Because the position is covered by a commercial activity review, management exercised its option to fill it with a term employee pending the outcome of the review. Being filled by a less than permanent employee did not change the tenure of the position. Because the appellant was offered a permanent position, this requirement was met.

Was the offered position in an agency as defined by 5 U.S.C. 5102?

The position offered was at the same employing activity in an agency as defined in 5 U.S.C. 5102. Therefore, this requirement was met.

*Was the offered position full time if the employee held a full time position?* 

The record shows that the appellant occupied and was offered a full time position. Therefore, this requirement was met.

Was the offered position in the same commuting area as the position immediately before the offer, unless the employee is subject to a mobility agreement or a published agency policy that requires employee mobility?

The record shows that the position was at the same activity and commuting area as the position held immediately before the offer. The appellant's concerns regarding overnight travel away from the permanent duty station are not covered under this criterion. Therefore, this requirement was met.

## Criteria of 5 CFR 536.209

Was the appellant offered a position with a rate of basic pay that was equal to or higher than the rate he or she was entitled to under pay retention?

The appellant said that his pay retention entitlement should be the rate of basic pay of the position from which he was downgraded, i.e., GS-10, step 7. His rationale is based on a March 17, 1997, notice of reduction-in-force and change to lower grade informing him that his retained grade entitlement would cease if he declined a reasonable offer of a position equal to or higher than the GS-10 grade level. However, 5 CFR 536.207(a)(3) defines this as a reasonable offer only during the period of **grade** retention that ended for the appellant on May 17, 1999.

The appellant's rate of basic pay under **pay** retention was his unadjusted basic pay of \$41,922. He was offered a GS-9 position at step 10, with an unadjusted basic rate of \$42,091 derived from the January 2000 basic General Schedule pay table. Because the rate of basic pay of the offered position exceeded the appellant's retained rate of pay, this requirement was met.

#### **Decision**

The appellant received a reasonable offer and, as a result of declination, his entitlement to retained pay was properly terminated. Therefore, the appeal is denied.