

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

**Claimant:** [name]

**Organization:** National Enforcement Investigations  
Center  
Office of Criminal Enforcement,  
Forensics and Training  
U.S. Environmental Protection Agency  
Denver, Colorado

**Claim:** Request for Voluntary Separation  
Incentive Pay

**Agency decision:** Denied

**OPM decision:** Denied

**OPM contact:** Robert D. Hendler

**OPM file number:** 05-0010

/s/ Linda M. Springer

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Linda M. Springer  
Director

5/31/2006

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Date

The claimant, formerly employed in a [position] with U.S. Environmental Protection Agency (EPA), in Denver, Colorado, requests that the U.S. Office of Personnel Management (OPM) reconsider EPA's decision denying her a voluntary separation incentive payment (VSIP) of \$25,000 when she retired from the agency, effective December 31, 2004. We accepted the claim on May 20, 2005, and received the agency administrative report (AAR) on July 25, 2005. For the reasons discussed herein, the claim is denied.

In her December 7, 2004, letter to OPM, the claimant states that she was a career Federal employee with no break in service since September 20, 1982; transferred from the National Park Service to EPA effective March 10, 2002; and that her total Federal service was more than 31 years. She states that on October 5, 2004, the EPA Administrator exercised VSIP authority and voluntary early retirement authority (VERA) for EPA employees in certain categories, and that she applied for a VSIP on October 7, 2004. The claimant states that on November 18, 2004, she was verbally informed that her request was denied because she did not meet one of the eligibility criteria; i.e., she "had not 'served continuously in EPA for three years prior to the date...' of the EPA announcement of the opportunity to apply." She said that she asked for reconsideration on that same date based on her belief that EPA had misapplied the eligibility criteria pursuant to 5 U.S.C. 3521(2), received written notification of the denial on November 30, 2004, and has not received a response to her request for a waiver.

The claimant states that she is an employee as defined in 5 U.S.C. 3521(2), and that:

the statutory language does not state that the period of continuous service must be in the same agency. Moreover, inasmuch as no Office of Personnel Management (OPM) Regulation that specifically states that the 3-year continuous service period has to be with the same agency, I submit that EPA has established an eligibility requirement that is unsupported by law.

In Joseph T. Torres v. Office of Personnel Management, 96-3367 (Fed. Cir.); 124 F.3d 1287 (September 12, 1997, the court ruled that OPM cannot restrict eligibility for statutorily authorized early out annuities beyond that statutory criteria. In like manner, I submit that the eligibility criterion established by EPA that an employee must have 3-years continuous service in EPA in order to qualify for a VSIP/Buy-out is illegal in that such a requirement is contrary to the definition of "employee" in 5 U.S.C. 3521.

In a letter dated February 1, 2005, supplementing her claim, the claimant provided a copy of an e-mail responding to her waiver request which states, in part:

The 3 year service requirement with EPA is a requirement that is set by the Office of Personnel (OPM) and conveyed to the Agency as an enclosure to the official approval letter dated Sept 30, 2004 from the Director, OPM to the Administrator, EPA.

The enclosure is titled: "Instructions for Use of this VSIP" and the first paragraph pertinent to the 3 year service rule reads as Follows:

“You may only offer the VSIP to employees who have been continuously employed by your agency (on an appointment that is not time-limited) continuously for at least 3 years.”

The enclosure and instructions above are the same as those given to EPA in 2003 in the OPM letter authorizing the use of buy-out authority in 2003.

OPM, as the authorizing agency, sets the rules and limitations of the use of the early-out authority including the requirement of 3 years service in EPA.

The claimant also refers to final OPM regulations on VSIP issued on January 27, 2005, which she believes:

conclusively establish that the 3 year period of continuous employment does not have to be in the same agency. Inasmuch as these final regulations are based on the authority under 5 USC 3521-3525, it is respectfully requested that my claim for a Voluntary Separation Incentive Payment be granted even though my claim was filed prior to the issuance of the final rule.

The claimant’s reliance on our jurisdiction in this matter is misplaced. Although we have assumed jurisdiction of claims of this nature in the past, this claim persuades us that our decision to do so was erroneous.

OPM’s authority to adjudicate compensation and leave claims flows from 31 U.S.C. § 3702. The authority in §3702 is narrow and limited to adjudication of compensation and leave claims. It is well settled that “[t]he starting point for interpretation of a statute is the language of the statute itself,” and “[a]bsent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.” *Kaiser Aluminum & Chemical Corp. v. Bonjorno*, 494 U.S. 827, 835, 110 S. Ct. 1570, 1575 (1990), citing *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108, 100 S. Ct. 2051, 2056 (1980). Section 3702 does not explicitly define the meaning of compensation for purposes of the statute. Under basic principles of statutory interpretation, undefined terms are understood to have their ordinary meaning. See *Abramson*, 42 Fed. Cl. at 629 (citing *Koyo Seiko Co., Ltd. v. United States*, 36 F.3d1565, 1571 n.9 (Fed. Cir. 1994).

The American Heritage Dictionary defines compensation in an employment context as: “Something, such as money, given or received in payment or reparation, as for a service or loss.” Legal-dictionary.thefreedictionary.com defines compensation as: “payment for work performed, by salary, wages, commission or otherwise.” Black’s Law Dictionary (1994) defines compensation as:

...Remuneration and other benefits received in return for services rendered; esp., salary or wages. [Cases: Master and Servant 68-72.5. C.J.S. *Employer-Employee Relationship* §§ 132-133, 138-153, 155-156, 163-172, 174-176.] "Compensation consists of wages and benefits in return for services. It is payment for work. If

the work contracted for is not done, there is no obligation to pay. [Compensation] includes wages, stock option plans, profit-sharing, commissions, bonuses, golden parachutes, vacation, sick pay, medical benefits, disability, leaves of absence, and expense reimbursement." Kurt H. Decker & H. Thomas Felix II....

However, many aspects of compensation as defined in Black's are excluded from the coverage of 31 U.S.C. § 3702. (See 5 U.S.C. § 8347 for Civil Service Retirement System claims adjudication, 5 U.S.C. § 8461 for Federal Employees' Retirement System claims adjudication, 5 U.S.C. § 8913 for Federal Employees' Health Benefits Program administration, and 5 U.S.C. § 8716 for Federal Employees' Life Insurance Program administration.) Therefore, compensation matters under the coverage of 31 U.S.C. § 3702 are circumscribed. Unlike such mandatory matters as severance pay (see 5 U.S.C. § 5595), compensation in the Federal service entails providing compensation while employed or as an inducement to become or remain employed (for example, see 5 U.S.C. §§ 5751-5757). In contrast, VSIP (and similar discretionary payments) are an inducement to leave the rolls of Federal employment. As such, it is inconsistent with the concept of compensation since it is an inducement not to work; and, as such, we find that it is excluded from the coverage of 31 U.S.C. § 3702.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the employee's right to bring an action in an appropriate United States Court.