

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

Claimant: [name]

Organization: [agency component]
Centers for Disease Control
U.S. Department of Health and
Human Services
Atlanta, Georgia

Claim: Request for Waiver of Debt

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM contact: Robert D. Hendler

OPM file number: 07-0019

/s/ Robert D. Hendler

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

3/16/2007

Date

The claimant is employed in a GS-14 position in the [agency component], Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, in Atlanta, Georgia. The claim request, which we received November 30, 2006, was submitted by his representative on his behalf and requested the Office of Personnel Management (OPM) waiver overpayment "in the amount of \$16, 215.58." We received pertinent information from the agency on February 15, 2007, a copy of the designation of representative on March 1, 2007, and additional information from the agency on March 9, 2007. For the reasons discussed herein, OPM does not have jurisdiction to consider this claim.

The representative seeks a waiver for her client because collection "would be inequitable, unfair and against good conscience. It would also be against the best interest of the United States in that it might dissuade employees from accepting longterm [sic] overseas project assignments." This rationale is based on the claimant's competitive selection for a temporary promotion in March 2002 to the GS-14 grade level for an overseas assignment. Claimant's representative asserts the claimant was assured the temporary promotion would be extended in January 2004, and he continued to be paid at the GS-14 grade level for two additional years. It was not "until May 2006 that it was discovered that the paperwork to process the extension was never processed." She asserts the claimant was blameless in that he "took all reasonable actions to secure the extension of the temporary promotion and that he had no reason to believe that his temporary promotion was not extended." The representative points out that the claimant's waiver request is supported by his superiors for whom he worked during his overseas assignment.

OPM's claims settlement authority is limited to determining whether a claimant owes an underlying debt to the Federal Government. Regulations concerning the adjudication and settlement of claims for compensation and leave (part 178 of title 5, Code of Federal Regulations (CFR)) require that a final agency-level denial has been issued (see 5 CFR 178.102(a)(3) and (b)) before it is submitted to the OPM for adjudication. From the record, it is also unclear as to whether the claimant ever submitted such a claim to the U.S. Department of Health and Human Services (HHS), Office of Human Resources which, we have been advised, coordinates with the HHS Office of General Counsel (OGC), in issuing final agency-level decisions on pay disputes and issues.

However, the instant case does not appear to challenge the claimant's underlying debt, thereby removing it from OPM's potential claims settlement purview. Rather, it is a request to waive the collection of funds which constitutes an established debt to the Government. As a result of legislative and executive action, the authority to waive overpayments of pay and allowances now resides with the heads of agencies. See the General Accounting Office Act of 1996, Pub. L. No. 104-316, 110 Stat. 3826, approved October 19, 1996, the Office of Management and Budget (OMB) Determination Order dated December 17, 1996, and 5 U.S.C. 5584. Neither Pub. L. No. 104-316 nor OMB's Determination Order of December 17, 1996, authorizes OPM to make or to review waiver determinations involving erroneous payments of pay or allowances. We have been advised agency debt waiver authority is vested in HHS's OGC. Therefore, we do not have jurisdiction to consider, or issue a decision on, the request for a waiver of indebtedness to the United States.

This OPM settlement of the claim 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.