

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

Claimant: [name]

Organization: Department of the Army
Camp Doha, Kuwait

Claim: Paysetting

Agency decision: Denied

OPM decision: Denied

OPM file number: 07-0021

/s/ for

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

3/26/2008

Date

The claimant was employed as a [GS-12 position] at Camp Doha, Kuwait, from December 2002 to April 2004. She believes her rate of basic pay for that position should have matched that of her previous position at Johnston Island. She requests the U.S. Office of Personnel Management (OPM) direct an adjustment in her rate of basic pay from the time she entered the position until her retirement in October 2005 after returning to the United States, including back pay for the difference in the pay rate and subsequent adjustment of her annuity payment based on the resulting higher salary. We received the claim request on February 22, 2007, and the claim administrative report on June 14, 2007. For the reasons discussed herein, the claim is denied.

The claimant was selected for a [GS-12 position] at Camp Doha, Kuwait, on September 9, 2002. She was reassigned to that position from a position of the same series and grade at Johnston Island, one of the U.S. Pacific Island Territories. Before accepting the position, she received an email from the servicing human resources office providing basic information about the position being offered, including the following notation: "Salary: Will remain the same as you are currently earning. This is a lateral move." She accepted the position and entered on duty in Kuwait on or about December 15, 2002. When she received her first Standard Form 50, Notification of Personnel Action, she found her rate of basic pay was \$59,949 rather than the rate of basic pay of \$74,934 she had been receiving at Johnston Island, and had expected would be matched in Kuwait. The agency subsequently informed the claimant her rate of basic pay at Johnston Island represented the special rate in effect for her position in that location. When she voluntarily reassigned to a non-special rate position in Kuwait, her rate of basic pay was set at the same grade and step on the General Schedule applicable to her position in the new location.

The claimant is not alleging her pay was set incorrectly under the applicable regulations, nor is there any indication in the background material she provided that she believes this to be the case. Rather, she asserts her rate of basic pay should be adjusted "based on the [aforementioned] email... which stated that my salary would remain the same." In subsequent email exchanges between the claimant and the agency human resources representative, she states "someone failed to take a close look at my LES [leave and earnings statement] before I accepted this job" and "the Government has breach my contract, also the terms and conditions which I accepted this position [sic]." The substance of her claim is that the agency should honor the salary offer made to her even though it was erroneous.

Under 5 CFR 531.203(d)(vii) in effect at the time the claim accrued, agencies had the discretion to set an employee's rate of basic pay using a GS employee's special rate established under 5 U.S.C. 5305 and 5 CFR part 530, as the highest previous rate upon reassignment to another position in the same agency only when:

(A) The special rate is the employee's current rate of basic pay; and (B) *An agency official specifically designated to make such a determination finds that the need for the services of the employee, and his or her contribution to the program of the agency, will be greater in the position to which he or she is being reassigned. Such determinations shall be made on a case-by-case basis, and in each case the agency shall make a written record of its positive determination to use the special rate as the employee's highest previous rate.*

It is clear from the record that the human resources representative who authored the email in question was not authorized to make an official agency commitment to use the claimant's Johnston Island special rate as the highest previous rate in setting her pay at Camp Doha, nor was

this the representative's intention. Email communications between the representative and the claimant indicate the representative was unaware of the difference between the Johnston Island and Kuwait salary rates when she sent the informational email referenced above. The claimant reports higher management officials at Camp Doha subsequently declined to approve increasing her rate of basic pay to match her rate of basic pay for her position in Johnston Island, for which approval is explicitly required by the above regulatory reference.

In the absence of specific statutory authority, the United States is not liable for the negligent or erroneous acts of its officers, employees, or agents, even though committed in the performance of their official duties. 44 Comp. Gen. 337 (1964). This has been consistently affirmed by the Courts, which have never upheld an estoppel claim against the Government for the payment of money. A rule of estoppel would invite endless litigation over both real and imagined claims of misinformation, imposing an unpredictable and substantial drain on the public fisc. *OPM v. Richmond*, 496 U.S. 414 (1990). Thus, although the claimant was led to believe the agency would match her salary at Johnston Island when she transferred to Kuwait, the fact that she was given this erroneous salary offer does not establish an entitlement to the offer absent the requisite approval by an authorized agency official.

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.