

**U.S. Office of Personnel Management
Compensation Claim Decision
Under section 3702 of title 31, United States Code**

Claimant: [name]

Organization: Department of the Army (DA)
Army Pentagon
Washington, DC

Claim: Pay for services rendered
for May 2011

Agency decision: N/A

OPM decision: Denied; Lack of standing and lack of
jurisdiction

OPM decision number: 11-0031

//Linda Kazinetz for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Merit System Audit and Compliance

10/4/2011

Date

In his June 20, 2011, letter to the U.S. Office of Personnel Management's (OPM) Office of the General Counsel, received on June 27, 2011, the claimant seeks payment "for services provided to the United States Army Medical Research and Development Command MRMC" and provides an "invoice for the Month of May 2011" seeking "Federal Employee Compensation per certified documented agreement for participating as a U.S. Army Human Medical Research Participant." The claim request was transferred on August 15, 2011, to Merit System Audit and Compliance for review and response. For the reasons discussed herein, the claim is denied for lack of standing and lack of jurisdiction.

Section 178.102(a) of title 5, Code of Federal Regulations (CFR), requires the claimant's *employing* agency to have reviewed a claim and issued a decision denying a claim before it is submitted to OPM for adjudication. As discussed in GAO's Principles of Federal Appropriation Law, Second Edition, Volume III, November 1994 (Redbook):

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.

The claimant states that the U.S. Army Surgeon General (USASG) and the U.S. Army Medical Research and Development Command (USAMRDC) "has [sic] denied the claim for payment." However, the documents submitted by the claimant do not establish that he has filed a claim with the Department of the Army. Instead, the claimant's June 20, 2011, letter to USASG and USAMRDC states "Reference: Invoice for U.S. Army Human Medical Research Participant" and:

Please find enclosed an invoice for participating as a Human Medical Research participant for the month of May 2011. Since there was a contract offered for my participation in the U.S. Army Human Medical Research Program and there has been no answer or no counter proposal from the U.S. Army Surgeon General these are the terms of the compensation for the month of May 2011. If there is no counter Offer [sic] for my participation in the U.S. Army's Human Medical Research from the U.S. Army these are the binding terms that you are agreeing to by not responding to the offer.

The claimant's June 20, 2011, letter must be construed as a billing device and is not a claim against the Government within the meaning of 31 U.S.C. § 3702(b)(1). As such, it transmits an attached invoice for \$357,590.00 from Genealena & Associates, LLC, with the same mailing address and telephone number as the claimant, and instructs that all checks be made payable to the claimant. While the claimant states that the USASG and the USAMRDC "has [sic] denied the claim for payment," he has also failed to provide a copy of same. Thus, the information submitted by the claimant does not establish he has filed or preserved a claim with the agency as required by statute (31 U.S.C. § 3702(b)(1)) and regulation (5 CFR 178.102(a)) or received a denial of same. The claimant has failed to file a valid claim with OPM. In addition, we note that, even if this matter constituted a valid claim, it would be subject to denial based on jurisdictional grounds.

Section 3702(a)(2) of title 31, United States Code (U.S.C.) states: “The Director of the Office of Personnel Management shall settle claims involving Federal civilian employees’ compensation and leave.” Therefore, the plain and unambiguous language of the statute makes clear a claim may only be filed by or on behalf of a Federal civilian employee or former Federal civilian employee. We must adhere to the statutory definition of “employee” found in 5 U.S.C. § 2105(a) for determining whether the claimant is a Federal employee for the purposes of receiving compensation under the provisions of title 5, U.S.C. Section 2105(a) of title 5 provides:

- (a) For the purpose of this title, “employee”, except as otherwise provided by this section or when specifically modified, means an officer and an individual who is--
 - (1) appointed in the civil service by one of the following acting in an official capacity--
 - (A) the President;
 - (B) a Member or Members of Congress, or the Congress;
 - (C) a member of a uniformed service;
 - (D) an individual who is an employee under this section;
 - (E) the head of a Government controlled corporation; or
 - (F) an adjutant general designated by the Secretary concerned under section 709(c) of title 32;
 - (2) engaged in the performance of a Federal function under authority of law or an Executive act; and
 - (3) subject to the supervision of an individual named by paragraph (1) of this subsection while engaged in the performance of the duties of his position.

The claimant has failed to provide any documentation showing he is a Federal employee as defined in 5 U.S.C. § 2105(a)¹. On August 17, 2011, a DA representative confirmed the agency had “no record of [the claimant’s] previous civil service in MEDCOM.” Further, claimant’s statement “there was a contract offered for [his] participation in the U.S. Army Human Medical Research Program” contradicts and, thus, undermines his assertion that he is Federal employee

¹ Claimant provided a TransUnion credit report issued “6/12/2010” as “reported” on “10/2006” as employed by the “US Army Med Research & Developmen” [sic] in Frederick, MD. The position held is shown as “SGRD HR” with “date hired” left blank. The claimant was “reported” on “03/2000” as employed by the “Department of Defence [sic]” in Washington, DC. The position held and date hired areas are blank. The credit report shows “05/75” as “date verified” as “retired” with no employer information. The date hired is shown as “04/1971” and the position held area is left blank. This document, however, does not identify how or by whom this information was “reported” or “verified,” does not define the meaning of these terms, and does not address or attest to the accuracy of the data. The lack of probative value with regard to this information was previously conveyed to the claimant in a related Fair Labor Standards Act Claim decision, OPM file number F-0000-00-01, issued May 18, 2009, and a denial of the claimant’s request to reopen and reconsider that decision, OPM file number F-0000-00-01R, issued July 9, 2009.

as defined in 5 U.S.C. § 2105(a). Since the claimant was not and is not a Federal employee, he has no standing to file a claim and this 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.