

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

Claimant: [name]

Organization: [agency component]
Bureau of Engraving and Printing
Department of the Treasury
[city & State]

Claim: Pay differential for "acting"
supervisory work

Agency decision: Denied

OPM decision: Denied; Lack of jurisdiction

OPM file number: 09-0015

//Judith A. Davis for

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

2/17/2012

Date

The claimant requests back pay for the time periods he served as "acting" supervisor and was paid a 25 percent pay differential as "acting assistant supervisor" rather than a 35 percent pay differential as "acting supervisor." The U.S. Office of Personnel Management (OPM) received the claim on November 10, 2008, the agency administrative report on May 14, 2009, additional documentation and narrative justification from the claimant on February 4, 2010, and at our request, additional clarification from the agency on May 25, 2011. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The organization in which the claimant works is comprised of numerous sections operating on a shift basis and staffed with employees in the Plate Printer, WE-4454, occupation. In June 2001, the claimant competed and was one of several selectees for the newly-established position of Acting Plate Printer Supervisor. The primary purpose of this position was to provide a pool of employees to serve in an official acting capacity in the absence of the Plate Printer Supervisors. At that time, the Plate Printer Supervisors were the first-level supervisory positions in the organization and were paid a 35 percent pay differential. When serving in this acting capacity, the claimant was paid the 35 percent differential in accordance with Bureau of Engraving and Printing (BEP) Manual, Chapter 532, Prevailing Rate Systems, Section 1, Acting Supervisor Policy:

The rate of pay earned as an acting supervisor is equal to the rate of pay of the first level supervisory position in the work area assigned. If the pay level of the supervisory position increases or decreases, i.e., through accretion of duties, or a change in the number of employees supervised, the acting supervisor pay rate will also change accordingly, without further competition, or use of adverse action procedures. For supervisory positions covered under pay plans with multiple steps, acting pay is set at step one.

In 2003, BEP established the new mid-level supervisory position of Plate Printer *Assistant* Supervisor, which included a 25 percent pay differential. In connection with this, all of the Acting Plate Printer Supervisor positions were abolished and the incumbents, including the claimant, were offered the position of Acting Plate Printer *Assistant* Supervisor. When serving in this acting capacity, the claimant is paid the 25 percent pay differential associated with the Assistant Supervisor position, which is now "the first level supervisory position in the work area assigned."

The claimant asserts that when he worked as acting supervisor for his "first level" supervisor, he was paid at the lesser pay differential of 25 percent "in violation of established BEP pay policy and procedure" as set forth in the above-cited BEP Manual. In his initial claim request, he asserted that "they were not paid appropriately when they performed acting supervisor duties of their "first level" supervisors, i.e., full Plate Printer Assistant Supervisors (or Plate Printer Supervisors), in accordance with the established agency pay rules." He clarified the basis for his claim in his later submission to us that "there is no difference between an assistant supervisor and a supervisor," either in the current job descriptions or in practice, except that "assistants were not permitted to do evaluations." He states he has "served as an Acting Plate Printer Supervisor for more than 9 years now, and still have not received the permanent position" even though he has "been performing all the duties of a permanent Plate Printer Supervisor" and received his

annual rating as a supervisor. Thus, the crux of the claimant's request is that the 35 percent pay differential should attach to the Acting Plate Printer Assistant Supervisor position because the duties being performed are actually those of the Plate Printer Supervisor, a position which the claimant does not occupy.

The agency counters that "the claimants are being paid the proper pay differential when they are acting Plate Printer Assistant Supervisors, even in those work areas where the Plate Printer Assistant Supervisor position has not been permanently filled as it is consistent with the Agency's Acting Supervisor Policy." The agency states "[t]he claimants are paid at the 25% differential in those work areas where an assistant supervisor vacancy has not been permanently filled because they are, nonetheless, acting as the assistant supervisor performing those functions of the first level supervisory position in the work area assigned; they are performing the functions of the assistant supervisor," and in fact, "there is no need to fill a permanent assistant supervisor position given that there is a trained pool of acting assistant supervisors."

Pay for prevailing rate employees of the BEP is governed by section 5349 of title 5, United States Code (U.S.C.), which states "the pay of employees . . . in the . . . Bureau of Engraving and Printing . . . shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and in accordance with such provisions of this chapter . . . as the pay-fixing authority of each such agency may determine." Thus, OPM has no authority to set or modify the rates of pay for BEP employees. Further, OPM's authority under 31 U.S.C. § 3702(a)(2) is narrow and limited to the adjudication of claims involving Federal employees' compensation and leave. It does not extend to reviewing an agency's organizational structure or the establishment or abolishment of specific positions. Thus, BEP may design its organizational structure and set or adjust the pay rates for positions within that structure, including supervisory pay differentials, and these actions are not subject to OPM review. Therefore, we lack jurisdiction over any consideration of the basis for establishing the Acting Plate Printer Assistant Supervisor position or the amount of pay differential that may attach to this position.

The claimant's request may be construed as an attempt to challenge the accuracy of his job description and its resultant occupational title through his assertion that he is performing duties associated with the Plate Printer Supervisor position rather than the Plate Printer Assistant Supervisor position. The claimant's reliance on the compensation and leave claims settlement authority in 31 U.S.C. § 3702(a)(2) to resolve what is at heart a classification issue is misplaced. As noted above, the authority in section 3702(a)(2) is narrow and limited to the adjudication of compensation and leave claims. Section 3702(a)(2) does not include any authority to decide position classification or job grading appeals. Therefore, OPM may not rely on 31 U.S.C. § 3702(a)(2) as a jurisdictional basis for deciding position classification or job grading appeals, and does not consider such appeals within the context of the claims adjudication function that it performs under section 3702. *Cf. Eldon D. Praiswater*, B-198758, December 1, 1980 (Comptroller General, formerly authorized to adjudicate compensation and leave claims under § 3702(a)(2), did not have jurisdiction to consider alleged improper job grading); *Connon R. Odom*, B-196824, May 12, 1980 (Comptroller General did not have jurisdiction to consider alleged improper position classification); OPM File Number 01-0016, April 19, 2001; OPM File Number 01-0045, January 7, 2002.

Although we may not adjudicate a job grading appeal under the provisions of 31 U.S.C. § 3702(a)(2), we note that under 5 U.S.C. § 5346(c) and CFR part 532, subpart G, OPM has the authority to adjudicate an appeal of the occupational series, grade, or title of an employee whose pay is fixed under the prevailing rate systems of 5 U.S.C., chapter 53, subchapter IV. However, 5 U.S.C. § 5342 specifically excludes BEP from coverage under 5 U.S.C. chapter 53, subchapter IV, except for the purposes of 5 U.S.C. § 5349 cited above. Therefore, OPM would lack jurisdiction to review the occupational series, grade, or title of positions at BEP and the claimant would lack standing to request such review under 5 CFR part 532, subpart G.

Further, it is well settled that employees are not entitled to back pay for periods of misclassification or misassignment. The U.S. Comptroller General has stated that an “. . . employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties performed. When an employee performs the duties of a higher grade level, no entitlement to the salary of the higher grade exists until such time as the individual is actually promoted. This rule was reaffirmed by the United States Supreme Court in *United States v. Testan*, 424 U.S. 392, at 406 (1976), where the Court stated that ‘. . . the federal employee is entitled to receive only the salary of the position to which he was appointed, even though he may have performed the duties of another position or claim that he should have been placed in a higher grade.’. . . Consequently, backpay is not available as a remedy for misassignments to higher level duties or improper classifications” (*Cassandra G. McPeak*, B-232695, December 15, 1989).

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.