

Fair Labor Standards Act Decision
Under section 204(f) of title 29, United States Code

Claimant: [name]

Agency Classification: N/A

Organization: Department of the Army
Army Pentagon
Washington, DC

Claim: Reopening and reconsideration request;
“Request for Assistance Denied Quid
Pro Quo”

OPM decision: Denied

OPM file number: F-0000-00-01R

/s/

Jeffrey E. Sumberg
Deputy Associate Director
Center for Merit System Accountability

7/9/09

Date

This decision is issued pursuant to a request for discretionary review under conditions and time limits specified in 5 CFR 551.708(a). The claimant has the right to bring action in the appropriate Federal court if dissatisfied with the decision.

Decision sent to:

Name and address]

Introduction

On June 11, 2009, the U.S. Office of Personnel Management's (OPM) Associate Director, Human Capital Leadership and Merit System Accountability Division, received a "Request for Assistance Denied Quid pro Quo" from [name]. The request was forwarded to OPM's Center for Merit System Accountability which, on May 18, 2009, had previously issued a Fair Labor Standards Act (FLSA) claim denial on this matter. Therefore, we are responding to this letter as a request for discretionary review under conditions and time limits specified in 5 CFR 551.708(a).

Background

OPM's May 18, 2009, FLSA claim decision, decided under 29 U.S.C. § 204(f) and 5 CFR part 551, subpart G, found OPM did not have jurisdiction to settle Mr Smith's claim since claimant failed to show he was an employee covered by OPM's FLSA claims adjudication process who performed work subject to the minimum wage and overtime provisions of the FLSA. OPM denied the claim based on lack of jurisdiction and lack of standing. OPM also noted, even assuming, *arguendo*, the instant claim was valid, it was time barred.

Evaluation

In his June 11, 2009, request the claimant states he is a "long time U.S. Government employee who's [sic] deferred compensation and benefits have not been released." He states "[T]he Office of Personnel Management has defaulted on its Fiduciary [sic] responsibility to issue the compensation annually." The claimant repeats the assertions in his original FLSA claim regarding employment "by the U.S. Army/U.S. Department of Defense since 1970" under "an employee agreement to be a Medical [sic] Research [sic] participant as a civilian employee for a period of 35 years" which ended in 2005 and at which time he was "suppose [sic] to be paid." The claimant states:

Now I am being told that no one in the Office of Personnel Management can find my deferred payroll Compensation [sic]. I understand that OPM is a big organization dispensing 42 billion annually.

The document that I submitted as proof of employment was determined by OPM as not being legitimate. That document was submitted to the U.S. Justice Department and the F.B.I. for proof of legitimacy [sic] neither organization deemed the document as a forgery. The document that's credibility was in question mentioned the U.S. Army, U.S. Department of Defense, and the Assistant Secretary of the U.S. Army was [sic] my employers as far back as 1976.

Therefore, I am asking that OPM do its due diligence and investigate the whereabouts [sic] of my 39 years of civilian payments.

Under 5 CFR 551.708(a), at its discretion OPM may reconsider its FLSA decision when material information was not considered or there is a material error of law, regulation, or fact in the original decision. The claimant disagrees with OPM's analysis and conclusion that

claimant has failed to show he was an employee covered by OPM's FLSA claims adjudication process who performed work subject to the minimum wage and overtime provisions of the FLSA. Instead, the claimant relies upon the TransUnion credit report issued January 3, 2008, already considered in our initial decision, as showing he was a Federal employee. The claimant asserts this document was accepted by the U.S. Department of Justice and a subordinate component, the Federal Bureau of Investigation, and neither organization deemed it a forgery. Our decision, however, did not conclude this document was a forgery. Rather, we concluded it provided no probative evidence the claimant was a Federal employee for purposes of the FLSA. The claimant has failed to show material information was not considered or there was a material error of law, regulation, or fact in the original decision, and has, therefore, failed to meet the regulatory requirements for OPM, at its discretion, to reopen and reconsider its original FLSA claim decision.

We also note the claimant misconstrues OPM's role with regard to Federal employee pay. Each Federal agency, directly or through their payroll provider(s), is responsible for paying its own employees. OPM's responsibility in adjudicating FLSA claims is restricted to determining whether the claimant has been compensated properly under the FLSA and whether the FLSA child labor provisions have been violated. See 551.701(a). OPM's FLSA responsibilities do not include investigating the whereabouts of the claimant's alleged "deferred payroll Compensation [sic]."

Decision

The claimant's request to reopen and reconsider his claim is denied for the foregoing reasons. Future correspondence on this matter will be filed without action.