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

Claimant: [name]

Organization: Peace Corps

Panama City, Panama

Claim: Deductions from bi-weekly pay

Agency decision: N/A

OPM decision: Denied; Lack of standing and lack of

jurisdiction

OPM decision number: 14-0001

/s/Linda Kazinetz for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Agency Compliance and Evaluation
Merit System Accountability and Compliance

4/9/14 _____

Date

By letter dated October 22, 2013, received by OPM on October 24, 2013, the United States Civilian Board of Contract Appeals (CBCA) transferred the instant claim to OPM, stating: "The board has reviewed this Notice of Appeal and determined this may be an issue that falls within the jurisdiction of the Director of the Office of Personnel Management." For the reasons discussed herein, the claim is denied for lack of standing and lack of jurisdiction.

The documents forwarded by CBCA include the Notice of Appeal (GSA Form 2465), dated September 30, 2013, received by CBCA on October 1, 2013, in which the claimant states, in pertinent part:

First Sub claim - I would like a final interpretation of the Terms and Conditions of my contract and recognition that I signed Option 1 of Contract No. PC-PSC-12-020 (Exhibit 1) in good faith on December 14, 2012 with the knowledge that I would be an Independent contractor and not an Employee of Peace Corps for any purpose.

Second Sub Claim - I, [the claimant], am dissatisfied with Peace Corps Panama's actions and explanation regarding deductions from my bi-weekly pay. I made no written agreement with Peace Corps to remove these wages.

This is a claim pursuant to the contract's Disputes clause (FAR) 52.233-1 in the amount of \$2,035.47 for unpaid wages.

The Notice of Appeal was accompanied by a memorandum dated July 18, 2013, to the Peace Corps Panama, containing these two sub claims supported by six exhibits, none of which were forwarded to OPM. At our request, the claimant provided copies of the six exhibits on October 30 and 31, 2013.

Information provided by the claimant includes copies of his initial contract (Exhibit 4-Contract No. PC-PSC-12-020) and option #1 (Exhibit 1) of his "Personal Services Contract" with the Peace Corps Panama. The initial contract states, in pertinent part, under Section H.3, Contractor Status: "It shall be recognized at all times that the Contractor is engaged by contract, that he/she is not an employee of the Peace Corps." Exhibit 5, a letter dated July 17, 2002, from the Department of the Treasury, Internal Revenue Service, to the General Counsel of the Peace Corps, concerning the Federal employment tax treatment of individuals who enter into personal service contracts with the Peace Corps, states in pertinent part:

Prior to amendment by the Puzey Act, section 10(a)(5) (22 U.S.C. 2509(a)(5)) of the Act provided that no Peace Corps PSC [personal services contractor] "shall be deemed an officer or employee or otherwise in the service or employment of the United States Government for any purpose." Subsequent to the amendment, section 10(a)(5) provides that no PSC, "shall be deemed an officer or employee or otherwise in the service or employment of the United States Government for purposes of any law administered by the Office of Personnel Management (except that the president may determine the applicability to such individuals of provisions of the Foreign Service Act of 1980 (22 U.S.C. 3901 et seq.)"

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 filing a claim under the provisions of 31 U.S.C. § 3702(a)(2). 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.

Thus, the documentation provided by the claimant shows he is employed by the Peace Corps under a personal services contract and is not a Federal employee as defined in 5 U.S.C. § 2105(a). Our conclusion is reinforced by the plain and unambiguous language of 22 U.S.C. § 2509(a)(5), which excludes Peace Corps PSCs as "being deemed an officer or employee or otherwise in the service or employment of the United States Government for purposes of any law administered by the Office of Personnel Management..." Since the claimant is not a Federal employee, he has no standing to file a claim with OPM and this claim must be denied for lack of jurisdiction. ¹

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.

¹ In addition, OPM lacks subject-matter jurisdiction in that the dispute concerns tax withholding and, as such, is a matter properly brought before the Internal Revenue Service.