

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

**Claimant:** [name]

**Organization:** Human Resources Management  
Administrative Services  
Veterans Affairs Medical Center  
Department of Veterans Affairs  
[city & State]

**Claim:** Pay retention

**Agency decision:** N/A

**OPM decision:** Denied

**OPM decision number:** 11-0035

//Linda Kazinetz for

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

6/14/2012

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Date

The claimant, who occupies a Human Resources Specialist, GS-201-11, position with the Department of Veterans Affairs (VA), is requesting the U.S. Office of Personnel Management (OPM) overturn her agency's decision to "discontinue grade/rate retention" upon her transfer from the U.S. Postal Service (USPS). We received the claim on August 25, 2011, and the agency administrative report (AAR) on December 22, 2011. For the reasons discussed herein, the claim is denied.

The claimant states that in 2009 the USPS closed its Erie District. As a result of the closing, the claimant, then an HR Generalist Principal, became an impacted employee and received general and specific Reduction in Force (RIF) notices. Subsequently, the claimant applied and was selected for a Postmaster, EAS-16, position in [city & State], in lieu of the RIF. In this position, the claimant was entitled to receive two years "saved grade" at the EAS-21 level from August 29, 2009 to August 29, 2011, followed by "indefinite saved salary". The claimant transferred to VA effective March 27, 2011. Upon her transfer, the VA determined the claimant was not entitled to retain her USPS rate. The claimant believes that since she received "grade/rate retention" while she was employed with the USPS, "grade/rate retention" should have been continued upon her transfer to VA.

The claimant appears to assert two arguments for continued "grade/rate retention" upon her transfer to the VA. The first is that "grade/rate retention" should not terminate under section 536.208(c)(1) or 536.308(a)(1) of title 5, Code of Federal Regulations (CFR) because she transferred from USPS to VA without a break in service of one workday or more. Part 536 of title 5, CFR, provides for grade or pay retention and not "grade/rate retention." The continuation of grade or pay retention under part 536 of title 5, CFR, applies to grade or pay retention provided under the authority of subchapter VI of chapter 53 of title 5, United States Code (U.S.C.). Since USPS "saved grade" is provided under the authority of 39 U.S.C. 1003, the claimant's receipt of pay under that authority is not subject to the provisions of 5 CFR part 536. See also U.S. Postal Service Employee and Labor Relations Manual, Section 415, Rate Retention and Change to Lower Nonbargaining Unit Grade, at [http://about.usps.com/manuals/elm/html/elmc4\\_005.htm](http://about.usps.com/manuals/elm/html/elmc4_005.htm).

The claimant also cites the following answer to "Frequently Asked Questions" on grade and pay retention from OPM's website to assert that her "grade/rate retention" should not terminate upon her transfer to VA because she was not reduced in grade:

Since a reduction in grade at the employee's request is a terminating event, a determination as to whether such a reduction occurred must be made at the time an employee under grade or pay retention is transferred. This determination must be made based on the actual grade of the employee's position rather than the employee's retained grade. For example, if the true grade of the employee's position is GS-12 and his or her retained grade is GS-13, then acceptance of a GS-12 position upon transfer to another agency is not considered a reduction in grade at the employee's request.

The term *reduced in grade or pay at the employee's request* is defined in 5 CFR 536.103 to exclude any reduction in grade that is directly caused or influenced by management

action. Thus, while a reduction in grade resulting from transfer to another agency may appear to be a voluntary movement, if that transfer was directly caused or influenced by management action at the losing agency, the gaining agency **must** continue the employee's grade or pay retention."

See [http://www.opm.gov/oca/pay/HTML/PYQA\\_ALL.asp#grade and pay – misc](http://www.opm.gov/oca/pay/HTML/PYQA_ALL.asp#grade%20and%20pay%20-%20misc).

OPM's guidance pertains to terminating grade and pay retention under title 5. Since the claimant was not receiving grade or pay retention under the provisions of title 5 when employed by USPS as previously discussed in this decision, this guidance is not applicable to her situation.

As provided in 5 CFR 536.102(d), an agency may not provide grade retention under 5 CFR part 536, subpart B, to an employee who moves from a position not under a covered pay system to a position under a covered pay system. The covered pay systems are the General Schedule (GS) and the prevailing rate pay system under title 5. The claimant's move from the USPS pay system to the GS was a move from a position not under a covered pay system to a position under a covered pay system and thus the claimant was not eligible for grade retention under title 5 upon movement.

The claimant would need to meet one of the conditions for mandatory or optional pay retention under 5 CFR 536.301 or 5 CFR 536.302, respectively, to be eligible for pay retention upon her transfer to VA. It appears the claimant is attempting to assert her transfer from USPS to VA "was directly caused or influenced by management action at the losing agency;" i.e., USPS, for purposes of mandatory pay retention under 5 CFR 536.301. The claimant appears to rely on the definition in 5 CFR 536.103 of *management action* which means, in pertinent part, "an action (not for personal cause) by an agency official not initiated or requested by an employee which may adversely affect the employee's grade or rate of basic pay," and to base her coverage under 5 CFR 536.102(a)(2) as an employee moving to a position under a covered pay system (GS) from a position not under a covered pay system (USPS), as entitling her to mandatory pay retention upon her transfer to VA. However, the claimant's transfer to VA does not meet any of the qualifying conditions for mandatory pay retention under 5 CFR 536.301(a)(1)-(5). Qualifying "management actions" for mandatory pay retention that "place" an employee under paragraphs (a)(2), (3), (4) and (5) of 5 CFR 536.301 apply "only when the employee remains in a position in the same agency." See 5 CFR 536.301(d). Further, 5 CFR 536.301(a)(1) would not apply since, as discussed previously, the claimant was not covered under the grade retention provisions of subpart B of part 536 of title 5, CFR.

The claimant's transfer from USPS to VA is not a "*management action*" within the meaning of 5 CFR part 536. The record shows the claimant applied of her own volition for the VA position she currently occupies. That the claimant was in a saved grade status at USPS prior to applying for her current VA position cannot be construed as "directly caused or influenced by a management action." As discussed in 5 CFR 536.301(d): "Optional pay retention under § 536.302 may apply when an employee transfers to a different agency as a result of a reduction in force or reclassification action..." While the claimant's decision to accept the EAS-16 position in lieu of RIF effective August 29, 2009, could be construed to be "directly caused or

influenced by a management action,” the claimant’s subsequent voluntary transfer to VA more than 18 months later cannot be considered a “directly caused or influenced” action.

Under 5 U.S.C. § 5363, an employee whose rate of basic pay otherwise would be reduced as a result of a management action is entitled to retain his or her rate of basic pay under certain circumstances. However, 5 CFR 536.102(b)(1), which supplements and implements the provisions of 5 U.S.C. § 5363, states agencies may not provide grade or pay retention under part 536 of 5 CFR to an employee who “[i]s reduced in grade or pay at the employee’s request.” Under 5 CFR 536.103, *reduced in grade or pay at the employee’s request* is defined, in pertinent part, as “a reduction in grade or pay that is initiated by the employee for his or her benefit, convenience, or personal advantage.” The claimant’s decision to apply for transfer to VA falls within the parameters of this definition. Therefore, 5 CFR 536.102(b)(1) bars the claimant from receiving retained pay upon her transfer to VA.

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.