



G A O

Accountability • Integrity • Reliability

**United States General Accounting Office
Washington, DC 20548**

B-302996

May 21, 2004

Mr. Leonard A. Nadybal
P.O. Box 77121
National Capitol Station
Washington, DC 20013

Subject: Claim for Additional Severance Pay

Dear Mr. Nadybal:

This responds to your letter of January 16, 2004, asking for assistance in obtaining \$39,222.00 for additional severance pay following the termination in 2003 of your employment in the District of Columbia Financial Responsibility and Management Assistance Authority (commonly referred to as the "Control Board"). As explained below, GAO does not have jurisdiction over your claim. For this reason, we may not consider it on its merits.

According to the materials we received with your letter to this Office,¹ as supplemented by the documentation you posted on the internet,² you were appointed to a position on the staff of the Control Board on May 13, 1997. Not quite six years later, on February 20, 2003, your position was terminated, effective immediately. The termination followed from the elimination of your position and your inability to obtain employment in one of the new positions being created as part of the termination and restructuring of the Control Board. You were given a lump sum severance payment equivalent to 26 weeks of your salary as of the time of termination, which amounted to \$39,222.00. You maintain that your severance payment should have amounted to 52 weeks of your salary. For this reason, you are seeking an additional \$39,222.00. You attribute this error to the application of District of Columbia, rather than federal, law in the determination of how much severance was due.

¹ Letter to David M. Walker, Jan. 16, 2003.

² See <http://home.comcast.net/~lnadybal/HR/SeveranceDocs.html> (last visited on May 12, 2004).

From your January 16 letter, we understand that you have previously unsuccessfully presented your claim to the District, the Office of Personnel Management (OPM), and the Merit Systems Protection Board (MSPB). Your letter of January 16 states that, in returning your claim to you, OPM and MSPB both referred to 31 U.S.C. § 3721 and led you to believe that GAO has previously exercised jurisdiction over claims like yours under 31 U.S.C. § 3721.

Unfortunately, you have been misinformed. As explained below, GAO has no authority to settle claims against other agencies pursuant to 31 U.S.C. § 3721. Section 3721 codifies the law known as the Military Personnel and Civilian Employees' Claims Act of 1964. This law authorizes agencies themselves, not GAO, to settle claims by government employees for loss of or damage to personal property incident to official service.³ The law specifies that an agency's settlement of a claim is final and conclusive. 31 U.S.C. § 3721(k). GAO does not settle claims under the Act (except for claims by GAO employees), nor may it question an agency's settlement as long as the agency's settlement was made in accordance with the statutory criteria and applicable regulations.⁴ *See, e.g.,* 62 Comp. Gen. 641, 642 (1983). More importantly, section 3721 does not apply to your claim. Your claim for additional severance pay would not qualify for consideration under section 3721 because it does not involve "damage to or loss of" personal property incident to service, as described in section 3721(b). This language is well understood to refer to a claim sounding in tort. *Cf. GAO, Principles of Federal Appropriations Law*, pages 12-40 through 41 and 12 62 through 71 (2nd Ed. 1994) (discussion of claims arising under section 3721 addressed under "Claims 'Sounding in Tort'").

In referring you to GAO, OPM and MSPB may have had in mind GAO's former claims settlement jurisdiction. From 1921 through 1996, the authority to settle and adjust many other kinds of claims by and against the United States was assigned by law to GAO. *See, e.g.,* 31 U.S.C. § 3702 (1994). During that period, upon occasion, GAO did consider, among other things, federal employee claims for additional severance pay under 5 U.S.C. § 5595. *E.g.,* B-260092, Feb. 15, 1995. However, in 1996, Congress amended the law to transfer that general claims settlement authority elsewhere in the government. Pub. L. No. 104-53, § 211, 109 Stat. 514, 535 (Nov. 19, 1995). Consequently, GAO no longer has that authority.⁵

³ The law defines "settle" to mean "consider, determine, adjust, and dispose of a claim by disallowance or by complete or partial allowance." 31 U.S.C. § 3721(a)(3). For this reason, even the denial of a claim constitutes its settlement. *Macomber v. United States*, 335 F. Supp. 197 (D.R.I. 1971).

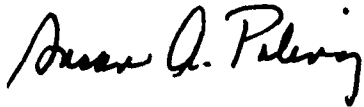
⁴ Judicial review of an agency settlement is not available, either. *See, e.g., Hanes v. United States Air Force*, No. C-00-1526-PJH (N.D. Ca. Feb. 8, 2001).

⁵ Initially, the law transferred this authority to the Office of Management and Budget (OMB). Pub. L. No. 104-53, § 211, *supra*. Later, OMB delegated most of that authority to other agencies. *See* OMB Determination with respect to Transfer of Functions
(...continued)

GAO's current authorities include the authority to settle the accounts of the federal government, 31 U.S.C. § 3526. This is not the authority to settle claims against the government as addressed in 31 U.S.C. § 3702, discussed above. What it means is that, under this statute and some other related laws, GAO is charged with determining whether federal appropriated funds may legally be used for particular purposes, given certain statutorily prescribed parameters of purpose, amount, and time. *See also, e.g.,* 31 U.S.C. § 3529.

We are keenly aware of the conundrum you presently face. Nevertheless, in order for any federal agency to review your claim, it must be able to identify some statutory provision that expressly grants it that authority. With respect to GAO's jurisdiction, we have no authority that would allow this Office to consider and decide a claim such as yours.

Sincerely yours,



Susan A. Poling
Managing Associate General Counsel

(...continued)

Pursuant to Public Law 104-53, June 28, 1996. "Attachment A" of the OMB Determination states that the authority to settle "[c]laims involving federal civilian employees' compensation and leave [pursuant to] 31 U.S.C. § 3702" was delegated to OPM. OMB's delegation to OPM (like its delegations to other agencies) was later codified in 31 U.S.C. § 3702(a)(2). *See* Pub. L. No. 104-316, § 202(n)(1)(B), 110 Stat. 3826, 3843-3844 (Oct. 19, 1996).