

Compensation Claim Decision
Under section 3702 of title 31, United States Code

Claimant: [name]

Organization: [agency componnet]
U.S. Department of Veterans Affairs
[city & State]

Claim: Retroactive within-grade increase and
back pay

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 08-0097

//Judith A. Davis for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability

9/5/2008

Date

The claimant occupies a [position] in the [agency component], U.S. Department of Veterans Affairs (VA), in [city & State]. She appears to seek assistance from the U.S. Office of Personnel Management (OPM) in having her agency credit the time she spent on a temporary promotion from GS-10, step 3, to GS-11, step 2, toward her waiting period for her within-grade increase (WIGI) from GS-11, step 2, to GS-11, step 3. The claimant believes the WIGI at issue should have been effective on November 12, 2006, rather than July 8, 2007, and believes she is due back pay for this corrective action. OPM received the request on July 30, 2008. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

Part 178 of title 5, Code of Federal Regulations (CFR), concerns the adjudication and settlement of claims for compensation and leave performed by OPM under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). Section 178.102(a)(3) of 5 CFR requires an employing agency to have already reviewed and issued an initial decision on a claim before it is submitted to OPM for adjudication. Based on the information submitted, we find no record of the claimant having filed a signed, written claim with her former employing agency as required by statute and regulation (31 U.S.C. § 3702(b)(1) and 5 CFR § 178.102(a)). However, OPM may render a decision on this matter based on jurisdictional grounds for the claim in its entirety.

OPM has authority to adjudicate compensation and leave claims for most Federal employees under the provisions of 31 U.S.C. § 3702(a)(2) and Fair Labor Standards Act (FLSA) claims under the provisions of 29 U.S.C. § 204(f). However, OPM cannot take jurisdiction over the FLSA, compensation or leave claims of Federal employees who are or were subject to a negotiated grievance procedure (NGP) under a collective bargaining agreement (CBA) between the employee's agency and labor union for any time during the claim period, unless the matter is or was specifically excluded from the agreement's NGP. The Federal courts have found Congress intended such a grievance procedure be the exclusive administrative remedy for matters not excluded from the grievance process. *Carter v. Gibbs*, 909 F.2d 1452, 1454-55 (Fed. Cir. 1990) (en banc), cert. denied, *Carter v. Goldberg*, 498 U.S. 811 (1990); *Mudge v. United States*, 308 F.3d 1220 (Fed. Cir. 2002). Section 7121(a)(1) of 5 U.S.C. mandates grievance procedures in negotiated CBAs are to be the exclusive administrative procedures for resolving matters covered by the agreements. *Accord, Paul D. Bills, et al.*, B-260475 (June 13, 1995); *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992).

Information provided by the claimant and her employing activity at our request shows the claimant occupied a bargaining unit position during the period of the claim represented by the American Federation of Government Employees (AFGE) Local [number]. The CBA between the VA and the AFGE National Veterans Affairs Council of Locals covering the claimant during the period of the claim does not specifically exclude compensation issues from the NGP (Article 42). Therefore, the claimant's retroactive WIGI and back pay request must be construed as covered by the NGP the claimant was subject to during the claim period. Accordingly, OPM has no jurisdiction to adjudicate this claim.

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.