

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

**Claimant:** [name]

**Organization:** [agency component]  
U.S. General Services Administration  
[city & State]

**Claim:** Request for return of money collected by  
agency for unearned leave

**Agency decision:** N/A

**OPM decision:** Denied; Lack of jurisdiction

**OPM file number:** 11- 0026

//Linda Kazinetz for

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

11/22/11

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Date

The claimant formerly occupied a Building Management Specialist position, GS-1176-12, with the U.S. General Services Administration (GSA) in [city & State]. The U.S. Office of Personnel Management (OPM) received the claim on May 25, 2011, and additional information from GSA on June 10, 2011. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

This claim arises from the demand of payment by GSA in the amount of \$4,792.82 for an overpayment of salary made to the claimant under the provisions of section 630.209(a) of title 5, Code of Federal Regulations (CFR), which states:

- (a) When an employee who is indebted for unearned leave is separated, the agency shall:
  - (1) Require him to refund the amount paid him for the period covering the leave for which he is indebted; or
  - (2) Deduct that amount from any pay due him.

The claimant states that GSA made an improper collection because he is covered by the provision of 5 CFR 630.209(b) which states:

- (b) This section does not apply when an employee:
  - (1) Dies;
  - (2) Retires for disability; or
  - (3) Resigns or is separated because of disability which prevents him from returning to duty or continuing in the service, and which is the basis of the separation as determined by his agency on medical evidence acceptable to it.

OPM has authority to adjudicate compensation and leave claims for Federal employees under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). OPM's adjudication authority is an administrative remedy, not a judicial remedy. *See* 5 CFR part 178. Section 7121(a)(1) of title 5, United States Code, directs that except as provided elsewhere in the statute, the grievance procedures in a negotiated collective bargaining agreement (CBA) shall be the exclusive administrative remedy for resolving matters that fall within the coverage of the CBA. The Court of Appeals for the Federal Circuit has found the plain language of 5 U.S.C. 7121(a)(1) to be clear, and as such, limits the administrative resolution of a Federal employee's grievance to the negotiated procedures set forth in the CBA. *Mudge v. United States*, 308 F.3d 1220, 1228 (Fed. Cir. 2002). Further, the Federal Circuit also found that all matters not specifically excluded from the grievance process by the CBA fall within the coverage of the CBA. *Id. at 1231*. As such, OPM cannot assert jurisdiction over the compensation or leave claims of Federal employees who are or were subject to a negotiated grievance procedure (NGP) under a 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 CBA's NGP. *See* 5 CFR 178.101(b).

The CBA between the GSA and the American Federation of Government Employees in effect during the period of the claim does not specifically exclude compensation issues from the NGP (Article 33) covering the claimant. Therefore, the claimant's request for a return of money collected by GSA must be construed as covered by the NGP the claimant was subject to during the claim period. As is clear in *Muniz v. United States*, 972 F.2d 1304 (Fed. Cir. 1992), the fact that the claimant is no longer employed by GSA does not remove the Civil Service Reform Act's

jurisdictional bar for claims covered by the CBA arbitration and grievance procedures that arose during and from his employment with GSA. OPM has no jurisdiction to adjudicate this claim or to intervene in this matter. Accordingly, this claim is denied for lack of jurisdiction.<sup>1</sup>

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.

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<sup>1</sup> Since we do not have jurisdiction, we will not address the issue raised by GSA's point of contact in this matter as to whether the claim is the subject of a release and waiver of claims executed by the claimant.