

Date: August 9, 2005

Claimant: [name]

File Number: 05-0009

OPM Contact: Robert D. Hendler

The claimant is employed in a [position] with the U.S. Mint in Denver, Colorado. He requests that the U.S. Office of Personnel Management (OPM) direct his agency to provide him with a retroactive 2.1 percent increase in pay from January 11 to March 20, 2004. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate this claim.

OPM is responsible for reviewing and adjudicating all claims related to compensation and leave for civilian positions under the provisions of 31 U.S.C. 3702. However, OPM cannot take jurisdiction over the compensation or leave claims of Federal employees *that are or were subject* to a negotiated grievance procedure (NGP) under a collective bargaining agreement between the employee's agency and labor union for any time during the claim period, unless that matter is or was specifically excluded from the agreement's NGP. (Emphasis added). The Federal courts have found that Congress intended that such grievance procedures are 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 title 5, United States Code (U.S.C.) mandates that the grievance procedures in negotiated collective bargaining agreements 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).

During the claim period, the claimant occupied and currently continues to occupy a position covered by a collective bargaining agreement between the American Federation of Government Employees and the U.S. Mint. Compensation and leave issues are not specifically excluded from the NGP covering the claimant. For OPM purposes, that such matters are not specifically excluded from the NGP is enough to remove this claim from OPM jurisdiction. We also note that pay for police positions at the U.S. Mint is governed by the provisions of 5 U.S.C. 5378. Such positions are not directly covered by the pay

adjustments provided for in 5 U.S.C., chapter 53, subchapter I, applicable to General Schedule and other enumerated categories of positions.

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.