

Date: January 31, 2006

Claimant: [name]

File Number: 04-0033

OPM Contact: Robert D. Hendler

The claimant is employed in a [NK-II] position with the Missile Defense Agency (MDA), [agency component], in Arlington, Virginia. She requests that the U.S. Office of Personnel Management (OPM) determine whether her salary has been set correctly. 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 (CBA) 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, mandates that the grievance procedures in negotiated CBAs 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).

The claimant is currently in a pay band position that is not covered by a CBA. However, the record shows that she occupied a position covered by a CBA between the Defense Contract Management Agency (DCMA) and the American Federation of Government Employees during the period of her claim. Compensation and leave issues were 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. The fact that the claimant was not a dues paying member of the union has no affect on this jurisdictional determination.

We note that the claimant filed a grievance with her current agency, MDA, since she felt her pay was set incorrectly. Specifically that the highest previous rate (HPR) was not utilized in setting

her pay upon promotion to [GS-7]. Prior to the receipt of [claimant's] Official Personnel Folder (OPF) and based on the information received from the losing agency, DCMA, MDA set her pay based on the information available. However, after receiving the OPF and performing a thorough review, MDA discovered that although it was Defense Logistics Agency's (the servicing human resources office for DCMA) policy to utilize HPR whenever applicable, it was inadvertently not used during a promotion action for [claimant]. Therefore, MDA corrected all personnel actions from August 15, 1999, to June 1, 2003, and [claimant] received back pay with interest.

The basis of [claimant's] claim is her view that "There is not law or regulation that states an employee covered by a special rate is excluded from the locality-based payment. The claimant's rationale, however, is in conflict with controlling regulation. The record shows that the claimant occupied a position during the claim period which was under the Special Salary Rate (SSR) Schedule Table Number 0029. According to section 531.606 of title 5, Code of Federal Regulations, an employee shall receive the greatest of their basic pay (including any applicable special salary rate or similar provision of law or special rate for law enforcement officer) or a locality rate of pay. When this occurs, employees will remain on the SSR table and receive the difference between SSR and locality. Since the locality pay for the Washington, DC, area exceeded the SSR for her position during the claim period, the agency adjusted [claimant's] pay to ensure that she received the difference between special salary and locality pay. Therefore, the agency was correct in how it calculated her pay.

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.