

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

**Claimant:** [name]

**Organization:** [agency component]  
U.S. Department of Homeland Security  
[city & State]

**Claim:** Pay setting upon promotion

**Agency decision:** Denied

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

**OPM file number:** 08-0107

//Judith A. Davis for

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

11/7/2008

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Date

The claimant occupies [position] in the [agency component], U.S. Department of Homeland Security, in [city & State]. She seeks to file a compensation claim for back pay and interest as a result of her agency's failure to set her rate of basic pay at GS-9, step 8, rather than GS-9, step 6, upon her promotion to the GS-9 grade level, effective April 29, 2007, from her [GS-7 position] for which she was receiving retained pay. The claimant also requests her pay upon promotion to the GS-11 grade level effective August 2008, be changed from step 2 to step 5, and she receive back pay and interest associated with both actions. The U.S. Office of Personnel Management (OPM) received the claim on September 11, 2008. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

OPM has authority to adjudicate compensation and leave claims for most Federal employees under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.), and FLSA claims under the provisions of 5 CFR part 551, subpart G. 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 CBA'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).

The claimant provided a copy of [agency component's] May 16, 2008, memorandum denying her request for the pay setting actions she seeks to bring before OPM. This memorandum advised the claimant she could submit a "formal pay claim appeal" to OPM to seek redress. However, copies of Notification of Personnel Action Standard Form 50s submitted by the claimant show she has occupied a bargaining unit position for the entire period of the claim. The CBA between the FLETC and the American Federation of Government Employees Local [number] in effect during the period of the claim does not specifically exclude compensation and leave issues from the NGP (Article 7) covering the claimant. Therefore, the claimant's pay setting claim must be construed as covered by the NGP the claimant was subject to during the claim period. Accordingly, OPM has no jurisdiction to adjudicate the claimant's compensation 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.