

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

**Claimant:** [name]

**Organization:** [agency component]  
Smithsonian Institution  
Washington, D.C.

**Claim:** Failure to receive step increases from  
2006 until January 2010

**Agency decision:** N/A

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

**OPM file number:** 10-0024

//Judith A. Davis for

---

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

5/12/10

---

Date

The claimant, formerly employed in a [ position] in the [agency component], Smithsonian Institution, in Washington, D.C., requests “recoupment of fair wages” from 2006 until January 2010, for not having received step increases although she received satisfactory performance appraisals. The U.S. Office of Personnel Management (OPM) received her claim on March 22, 2010, and additional information from the Smithsonian Institution on March 23, 2010. For the reasons discussed herein, the claim is denied.

Although OPM has the authority to adjudicate compensation claims for many Federal employees, OPM cannot take jurisdiction over compensation 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. The Federal courts have found Congress intended such a grievance procedure to be the exclusive administrative remedy for matters not excluded from the grievance process. *Carter v. Gibbs*, 909 F.2d 1452 (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 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 CBA between the Smithsonian Institution and the American Federation of Government Employees, Local [number], in effect during the period of the claim does not specifically exclude compensation issues from the NGP (Article XXI) covering the claimant. Therefore, the claimant’s compensation claim must be construed as covered by the NGP the claimant was subject to during the claim period and OPM has no jurisdiction to adjudicate this claim. As is clear in *Muniz v. United States*, 972 F.2d 1304 (Fed. Cir. 1992), the fact the claimant is no longer employed by Smithsonian Institution does not remove the Civil Service Reform Act’s jurisdictional bar for claims covered by CBA arbitration and grievance procedures which arose during and from her employment with the Smithsonian Institution.<sup>1</sup>

This OPM settlement of the claim is final. No further administrative review is available within OPM. Nothing in this settlement limits the employee’s right to bring an action in an appropriate United States court.

---

<sup>1</sup> Although we lack jurisdiction to consider this claim, a Notification of Personnel Action provided by the agency at our request to establish the claimant’s bargaining unit status shows the claimant received a step increase from GS-5, step 4, to GS-5, step 5, effective December 7, 2008.