

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

Claimant: [name]

Organization: Internal Revenue Service
Department of the Treasury,
[city & State]

Claim: Pay setting

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 10-0052

//Judith A. Davis for

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

2/24/2011

Date

On September 7, 2010, the U.S. Office of Personnel Management's (OPM) Merit System Audit and Compliance received a compensation claim from [claimant] for a pay setting dispute relating to his employment as a Secretary, GS-318-5, with the Internal Revenue Service (IRS), in [city & State]. We received additional information from the employing agency on November 3, 2010. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

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 grievances 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).

Information provided by the claimant shows the IRS human resources office (HRO), which the claimant contacted to resolve his pay setting issue, interpreted the basis of this claim as a pre-employment "appointment" issue. As such, it appears the HRO concluded this issue was excluded from the scope of the NGP under Article 41, Section 1.D.4: "any examination, certification or appointment." This exclusion, which is statutory in nature, concerns three components of the staffing process; i.e., the examination of candidates, the referral of candidates on a list of eligibles, and appointment of candidates to Federal positions by authorized appointing officials. *See* 5 U.S.C. § 7121(c)(4). This exclusion does not extend to the pay setting process provided for in determining the rate of basic pay under subpart B of part 531 of title 5, Code of Federal Regulations. The CBA between the IRS and the National Treasury Employees Union (NTEU) covering the claimant during the period of the claim does not specifically exclude pay setting issues from the NGP (Article 41). Therefore, this 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.

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.