

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

Claimant: [name]

Organization: [organizational component]
Department of the Air Force
[installation & State]

Claim: Leave accrual rate

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 12-0021

//Judith A. Davis for

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

2/13/2013

Date

The claimant is currently employed in an Aircraft Pilot (Simulator Instructor), GS-2181-12, position with the Department of the Air Force. In his February 14, 2012, letter received by the U.S. Office of Personnel Management (OPM) on February 28, 2012, the claimant seeks to receive "full credit for [his] service...as a pilot instructor from 25 February 1997 to 30 April 2007" for leave accrual purposes which "will result in a leave accrual rate of eight hours per pay period rather than six, resulting in equal treatment with [his AFB] peers that [he has] served side by side with for the past 15 years." We received additional information from his employing agency on April 25, December 19, and December 20, 2012. For the reasons discussed herein, the claim is denied.

The claimant states he "did not receive the credit [for service as a pilot instructor] prior to beginning" his civil service employment when he and other "simulator pilots switched from contract to civil service positions 1 October 2010." He describes his efforts to obtain credit for his previous work experience, asserts the previous Training Wing Commander supported his efforts to obtain credit, and asserts a member of the AFB Civilian Personnel Office misinformed him regarding the actions he needed to take to obtain such credit, resulting in his "being denied valuable leave and family time worth approximately \$17,000." He states: "I believe U.S. federal antidiscrimination law should take precedence in this case and allow full credit for my years of service..."¹

Section 178.102(a) of title 5, Code of Federal Regulations (CFR), indicates that the claimant's employing agency must review and issue a written decision on a claim before it is submitted to OPM for adjudication. The claimant is responsible for preserving the claim period, by proving the signed, written claim was filed within the applicable statute of limitations. *See* 5 CFR 178.104. The information provided by the claimant with his request does not show he has filed a signed, written claim with an Air Force component authorized to issue an agency-level decision or that he has received such a decision. Nevertheless, we may render a decision based on 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, U. S. C., 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 grievance 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

¹ The claimant states in his February 14, 2012, claim request that he has filed a formal equal employment opportunity complaint on this matter.

period, unless the matter is or was specifically excluded from the CBA's NGP. *See* 5 CFR 178.101(b).

The CBAs between the [organizational component] and the American Federation of Government Employees, Local [number], covering the claimant during the period of the claim, do not specifically exclude compensation issues from the NGP (Article 26 in the CBA effective May 18, 2006, and Article 25 in the CBA effective July 29, 2011). Therefore, this claim must be construed as covered by the NGPs 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.