

Date: August 19, 2002

Matter of: [name]

File Number: 02-0024

OPM Contact: Deborah Y. McKissick

The claimant is a former military member hired locally overseas, who is requesting reconsideration of his agency's decision regarding his entitlement to receive a living quarters allowance (LQA). The claimant is employed with the Department of the Army. We accepted the claim on April 17, 2002, and we received the agency's information on June 12, 2002. For the reasons stated below, we do not have jurisdiction to consider this claim.

The claimant retired from active military duty with the U.S. Army on January 31, 2001, in Korea. The claimant applied for a [position] in Korea with the 1<sup>st</sup> Signal Brigade. He was offered the position on January 23, 2002, and accepted the position on January 28, 2002. He began working with the agency on February 4, 2002. The agency hired the claimant as a "local hire" and made the determination not to authorize payment of LQA during his tour.

Based on the information provided by the claimant's agency, the claimant's position is covered under the collective bargaining agreement (CBA) during the time of the claim. The U.S. Court of Appeals for the Federal Circuit has determined that if a person filing a claim was a bargaining unit member during any part of the complaint period, the unit was covered by a CBA, and the agreement did not explicitly exclude the issues being reviewed by OPM from its negotiated grievance procedure (NGP), then the person's administrative avenue of redress is limited to the NGP. *Carter v. Gibbs*, 909 F.2d 1452, 1545-55 (Fed. Cir. 1990). Therefore, we reviewed the CBA between the United States Forces Korea/Eight United States Army and the National Federation of Federal Employees Local 1363 to determine whether we have jurisdiction or if the negotiated grievance procedure provides the sole administrative remedy to resolve the claim.

The issues of your claim were not excluded from the negotiated grievance procedures under Article X, Section 3, of the *Agreement between the United States Forces Korea/Eight United States Army and the National Federation of Federal Employees Local 1363*, dated January 1998.

OPM cannot take jurisdiction over the claim of Federal employees who are or were subject to a negotiated grievance procedure under a collective bargaining agreement between the employee's agency and labor union, unless that matter is or was specifically excluded from the agreement's grievance procedure. This is because the courts have found that Congress intended that such a grievance procedure is to be the exclusive 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*, 498 U.S. 811 (1990), construing therein the provision in the

Civil Service Reform Act codified at 5 U.S.C. § 7121(a). That Act mandates that the grievance procedures in negotiated collective bargaining agreements be the exclusive remedy for matters covered by the agreements. *Accord, Paul D. Bills, et al.*, B260475 (June 13, 1995); *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992). Accordingly, OPM cannot assert jurisdiction over, or issue a decision concerning, this matter.

This settlement is final. No further administrative review is available within the Office of Personnel Management. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States Court.