

Date: April 14, 2004
Claimant: [name]
File Number: 03-0028
OPM Contact: Deborah Y. McKissick

The claimant is a Police Officer with the Department of Veterans Affairs (VA), Veterans Affairs Medical Center in [city & State]. He is filing a claim requesting the Office of Personnel Management OPM “conduct a review for the computation of Special Pay Scale computed by the Houston VA Medical Center” for the period from September 2002 until the present. OPM received the compensation claim on July 23, 2002, the agency administrative report on September 12, 2003, and a copy of the applicable collective bargaining agreement on March 31, 2004. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate this claim.

During the claim period, the claimant’s position was covered by a collective bargaining agreement between the American Federation of Government Employees (AFGE) and the Department of Veterans Affairs. OPM is responsible for reviewing and adjudicating all claims related to compensation and leave for civilian positions. However, OPM cannot take jurisdiction over the claims of Federal employees *that are or were subject* to a negotiated grievance procedure under a collective bargaining agreement 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 negotiated grievance procedure (NGP). (Emphasis added). This is because the courts have found that Congress intended that such a grievance procedure is to 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 title 5, United States Code (U.S.C.) mandates that the grievance procedures in negotiated collective bargaining agreements be the exclusive administrative procedures for resolving 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). Because pay setting issues were not specifically excluded from the NGP, they must be construed as covered by the NGP that the claimant was subject to during the claim period. Therefore, OPM has no jurisdiction to adjudicate the compensation claim for pay setting for the claimant during the claim period.

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.