



United States
**Office of
Personnel Management**

Washington, DC 20415-0001

In Reply Refer To:

Your Reference:

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Date: July 9, 2004

Claimant: [name]

File Number: 04-0022

OPM Contact: Robert D. Hendler

The claimant is employed in a [position] with the Naval Surface Warfare Center in Dahlgren, Virginia. She is filing a claim requesting that the Office of Personnel Management (OPM) review her rights afforded by the Federal Employees Compensation Act and other regulations to include "leave, retirement, and any within grade, step increases, and back pay due me." Information in the request, subsequently confirmed with the claimant by telephone on July 1, 2004, shows that she has addressed her retirement claim separately with the OPM component which has the authority to adjudicate retirement claims. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate the remaining issues of this claim.

During the claim period, the claimant occupied, and continues to occupy, a position covered by a collective bargaining agreement between the American Federation of Government Employees (AFGE), Local 2096 and the Naval Surface Warfare Center. OPM is responsible for reviewing and adjudicating all claims related to compensation and leave for civilian positions under the provisions of 31 U.S.C. 3702. However, OPM cannot take jurisdiction over the compensation, leave, or FLSA 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 bane), *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 compensation and leave issues are not specifically excluded from the *NGP* covering the claimant, they must be construed as covered by the *NGP* that the claimant was and continues to be subject to during the claim period. Therefore, OPM has no jurisdiction to adjudicate the compensation claim.

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 action in an appropriate United States Court.