

## United States Office of Personnel Management

Washington, DC 20415-0001

In Repl' Refer To:

Y't"r Reference:

Date:	July 9, 2004
Claimant:	[name]
File Number:	04-0027
OPM Contact:	Robert D. Hendler

The claimant is employed in a [job] with the Tomah Veterans Affairs Medical Center in Tomah, Wisconsin, which is part of VA Great Lakes Health Care System. He is filing a claim requesting that the Office of Personnel Management, (OPM) direct his agency to correct the step at which he was hired after separating from the military and returning to Federal civilian employment on February 23, 2003. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate this claim.

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During the claim period, the claimant occupied, and continues to occupy, a job 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 under the provisions of 31 U.S.C. 3702. However, OPM cannot take jurisdiction over the compensation or leave 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)(l) 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, 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 an action in an appropriate United States Court.