Date: January 10, 2006

Claimant: [name]

File Number: 05-0018

OPM Contact: Robert D. Hendler

The claimant was employed in a Medical Officer (Internal Medicine), GS-602-14, position with the U.S. Department of Health and Human Services (HHS), Indian Health Service (IHS), in [city & State]. He requests that the Office of Personnel Management (OPM) direct his former employing agency to provide him with a lump sum payment for unused annual leave remaining after his termination on October 7, 2004. He asks that OPM review the legality of his termination one day prior to his completion of one-year probation, audit his agency's use of salary dollars and patient-dedicated dollars, and overturn his agency's decision to require him to pay back the physicians comparability allowance (PCA) that he had received. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate this claim.

OPM is responsible for reviewing and adjudicating all claims related to compensation and leave for civilian positions under the provisions of section 3702 of title 31, United States Code (U.S.C.). However, OPM cannot take jurisdiction over the compensation or leave claims of Federal employees that are or were subject to a negotiated grievance procedure (NGP) under a collective bargaining agreement (CBA) 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 NGP. (Emphasis added). The Federal courts have found that Congress intended that such grievance procedures are 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, mandates that the grievance procedures in negotiated CBAs be the exclusive administrative procedures for resolving matters covered by the agreements. Accord, Paul D. Bills, et al., B-260475 (June 13, 1995); Cecil E. Riggs, et al., 71 Comp. Gen. 374 (1992).

During the claim period, the claimant occupied a position covered by a CBA between the Local [number], Laborer's International Union of North America, AFL-CIO, and IHS's [service unit], including the [component], in [city & State]. Compensation and leave issues, including PCA, are not specifically excluded from the NGP covering the claimant. For OPM purposes, that such matters are not specifically excluded from the NGP is enough to remove this claim from OPM's jurisdiction.

OPM's authority to adjudicate compensation and leave claims flows from 31 U.S.C. §3702. The authority in §3702 is narrow and limited to adjudication of compensation and leave claims. Therefore, OPM may not rely on 31 U.S.C. §3702 as a jurisdictional basis for reviewing the legality of his termination one day prior to his completion of one-year probation or audit his agency's use of salary dollars and patient-dedicated dollars.

We also note that investigations of fraud, waste, and abuse regarding the expenditure of Government funds may be raised with HHS's Office of the Inspector General. The Merit Systems Protection Board has jurisdiction over terminations of employment during probation under the circumstances defined in 5 CFR 1203.3(a)(8)(i) and (ii).

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.