## Compensation Claim Decision Under section 3702 of title 31, United States Code

**Claimant:** [name]

**Organization:** Equipment Management Division

Directorate of Logistics Operations McAlester Army Ammunition Plant U.S. Army Industrial Operations

Command

Department of the Army McAlester, Oklahoma

Claim: Request for Unpaid Pay Adjustment

**Agency decision:** Denied

**OPM decision:** Denied; Lack of jurisdiction;

**OPM contact:** Robert D. Hendler

Date

**OPM file number:** 05-0029

Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability
9/6/2006

The claimant is employed in a [WG-7] job with the McAlester Army Ammunition Plant, Department of the Army, in McAlester, Oklahoma. He requests the Office of Personnel Management (OPM) audit his pay actions because he believes his organization failed to give him the 2002 comparability adjustment he was entitled to receive. He requests back pay, including overtime and designated allotments to the Thrift Savings Plan. We received his request on May 24, 2005, the agency administrative report on October 4, 2005, and additional information on March 1, 2006. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate the claim.

The claimant, previously employed in a grade 10 job, was in a retained-grade status when he transferred on December 2, 2001, from New Orleans, Louisiana, through his agency's Priority Placement Program, to a grade 7 job at the ammunition plant. While in his prior job, he received the January 2001 pay rate adjustment for the New Orleans, Louisiana, Wage Area. Upon transfer, the claimant's rate of pay did not change because the agency indicated it was outside the rate range of the retained grade on the Tulsa wage rate schedule in effect on that date. On December 31, 2001, OPM issued a new wage rate schedule for the Tulsa, Oklahoma, Wage Area but with an effective date of October 21, 2001. The agency indicated it reviewed the claimant's transfer personnel action using the new wage rate schedule and determined his pay entitlement was not impacted because his retained rate of pay was still outside the rate range of his retained grade and pay on the schedule. The claimant asserts that when the new schedule was implemented he should have received 100 percent of the pay increase designated for his retained grade and step by the new schedule, effective the date of his transfer to the installation. He maintains that the agency has miscalculated his pay since that time.

The claimant's entitlement to WG-10 grade retention terminated on February 13, 2002, at which time his entitlement to pay retention began. At that time, the agency indicated it set his pay in accordance with authorized pay retention procedures using the October 21, 2001 wage rate schedule for pay comparison. The claimant's rate of pay did not change. On October 20, 2002, the claimant received a pay adjustment, based on the 2002 wage rate schedule for the Tulsa wage area, equal to 50 percent of the increase in the maximum rate of basic pay for his grade 7 job.

The agency advised the claimant on procedures for submitting a claim to OPM. However, OPM cannot take jurisdiction over the compensation or leave claims of Federal employees who 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. Federal courts have found 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, 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).

Information provided by the agency at our request shows that the claimant is in a bargaining unit job and is covered by the CBA between the McAlester Army Ammunition Plant and the American Federation of Government Employees, Local 2815. The agency administrative report states the NGP in question "would not include a claim based on a pay action." This assertion is

not supported by the record. The CBA's NGP is silent with regard to pay-setting disputes. Because compensation issues are not specifically excluded from the NGP covering the claimant, they must be construed as covered by the NGP that the claimant was subject to during the claim period. Therefore, OPM also has no jurisdiction to adjudicate any compensation claim potentially flowing from his request.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the employee's right to bring an action in an appropriate United States Court.