

Date: April 4, 2006
Claimant: [name]
File Number: 06-0002
OPM Contact: Robert D. Hendler

The claimant is employed in a [position] with the U.S. Department of Justice, Federal Bureau of Prisons, in San Antonio, Texas. He requests that the Office of Personnel Management (OPM) reverse the agency's denial of his request for a "compromise of claim." We received his request on October 4, 2005, the agency administrative report on December 19, 2005, and additional information from the agency on March 28 and 29, 2006. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate this claim.

The claimant requests that he not be required to repay a \$5,059.05 salary overpayment resulting from an agency error which changed his duty station from San Antonio, Texas, to Washington, DC. He describes how he had learned of the error, the actions he took to correct them, and states:

I strongly feel my employing agency should take responsibility for their mistake and waive the repayment of my salary overpayment. It is hoped that after your review of the above rebuttal, my appeal of the denial of my "compromise of claim" be granted.

The agency administrative report states that subsequent to August 19, 2005, denial of the claimant's request to reconsider its "compromise of claim" denial, the agency received information not previously disclosed as a result of our request for a claim administrative report. The agency report states: "Therefore, the BOP's position on ...[the] claim has changed from denial to approval." An e-mail from the agency on March 29, 2006, confirmed that the compromise of claim had been approved and the debt the claimant owed was waived, thereby mooting this claim.

We will, however, address two issues raised in this claim request. OPM's authority to adjudicate compensation and leave claims flows from 31 U.S.C. 3702 which is narrow and limited to adjudications of compensation and leave claims. As a result of legislative and executive action, the authority to waive overpayments of pay and allowances now resides with the heads of agencies, regardless of the amount. See the General Accounting Office Act of 1996, Pub. L. No. 104-316, 110 Stat. 3826, approved October 19, 1996, and the Office of Management and Budget (OMB) Determination Order dated December 17, 1996. Neither Pub. L. No 104-316 nor OMB's

Determination Order of December 17, 1996, authorizes OPM to make or to review waiver determinations involving erroneous payments of pay or allowances. Accordingly, we have no jurisdiction to consider, or issue a decision on, the request for a waiver; i.e., “compromise of claim” of the claimant's indebtedness to the United States.

The agency's August 19, 2005, denial advised the claimant that he had the right to appeal the denial to OPM. 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. The Federal 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 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 position. The claimant is covered by the CBA between the Council of Prison Locals, American Federation of Government Employees, and the Federal Bureau of Prisons. 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 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 the OPM. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States Court.