

Date: April 6, 2006
Claimant: [name]
File Number: 06-0029
OPM Contact: Robert D. Hendler

The claimant was formerly employed in a [position] at the St. Petersburg Regional Office, Veterans Benefits Administration, Department of Veterans Affairs, in St. Petersburg, Florida. He requests the Office of Personnel Management (OPM) direct his former agency to pay him for 104 hours of restored leave he forfeited because it was not used within mandatory time limits. For the reasons discussed herein, the claim is denied.

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. 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 occupied a bargaining unit position covered by a CBA between the Department of Veterans Affairs and the American Federation of Government Employees. 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 has no jurisdiction to adjudicate any leave 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.