

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

**Claimant:** [name]

**Organization:** [agency component]  
Department of the Navy  
San Diego, California

**Claim:** Retroactive Promotion; Performing  
Higher Graded Duties

**Agency decision:** N/A

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

**OPM file number:** 07-0030

/s/ for

---

Robert D. Hendler  
Classification and Pay Claims  
Program Manager  
Center for Merit System Accountability

7/27/2007

---

Date

The claimant's January 16, 2007, letter to the U.S. Office of Personnel Management (OPM) indicates the claimant previously filed with the Merit Systems Protection Board (MSPB) on what appeared to be the same matter he seeks to raise with OPM; i.e., "I am asking for a retroactive pay grade increase to that of GS-8/9, starting with 1986 and up to and including 2002." The claimant states he contacted the "OSC [Office of Special Counsel] in San Francisco," was advised the OSC "could do nothing for me" since he had raised the matter with MSPB, and was told he should submit his "complaint" to OPM. The claimant submitted a letter, dated April 4, 2007, at the request of OPM's Classification and Pay Claims program Manager, clarifying the issues of his claim. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate this claim.

The claimant asserts he performed both the duties of his official GS-5, Supply Clerk, position and WG-6 warehousing work for most of the 18 years (1984-2002) he worked in the Inventory Section. He states he was expected to lift and move very heavy material by hand, sometimes without the use of a handcart or hand-operated pallet jack, sometimes moving items weighing more than 100 pounds. The claimant states he spent an average of five and one-half hours in the warehouse performing WG-6 work and would "come back to my office and use the data that I had collected, and make the required changes to the **Computer Data Base**." He bases his request for "a retroactive pay grade increase to that of GS-8/9" because of his belief he performed the work of these two positions rather than only his position of record.

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* (emphasis added), unless the matter is or was *specifically* excluded from the CBA's NGP. The Federal courts have found Congress intended 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 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 claimant's former employing agency at our request shows the claimant was in a bargaining unit position covered by a CBA between the Headquarters, U.S. Marine Corps and the American Federal of Government Employees Council [number] during the period of his claim. This occurred when [former name of agency component] became the [current name of agency component] in October 1997 and the Master Labor Agreement between the U.S. Marine Corps and AFGE Council [number], dated August 14, 1998, was expanded to cover nonsupervisory general schedule and wage grade employees at [former name of agency component] other than for supervisors, management officials, planners and estimators, staff assistants, professional and technical employees, employees covered by other labor organizations (including firefighters), and employees described in 5 U.S.C. § 7112(b)(2), (3), (4), (6), and (7). Compensation and leave issues were not specifically excluded from the NGP covering the claimant. For OPM purposes, the fact such matters were not specifically excluded from the NGP (Article 12) is enough to remove this claim from OPM's jurisdiction.

Even though 5 U.S.C. §§ 5112 and 5346(c) authorize OPM to decide position classification and job grading appeals, respectively, OPM's authority to adjudicate compensation and leave claims flows from a different law -- 31 U.S.C. 3702. The authority in § 3702 is narrow and limited to adjudications of compensation and leave claims. Section 3702 does not include any authority to decide position classification or job grading appeals. Therefore, OPM may not rely on 31 U.S.C. § 3702 as a jurisdictional basis for deciding position classification or job grading appeals and does not consider such appeals within the context of the claims adjudication function it performs under § 3702. *Cf. Eldon D. Praiswater*, B-198758, December 1, 1980 (Comptroller General, formerly authorized to adjudicate compensation and leave claims under section 3702, did not have jurisdiction to consider alleged improper job grading); *Connon R. Odom*, B-196824, May 12, 1980 (Comptroller General did not have jurisdiction to consider alleged improper position classification).

Furthermore, the clear and unambiguous language of 5 U.S.C. 5112(b) requires us to adjudicate appeals under the provisions of subsection (a). That subsection requires OPM to "ascertain currently the facts as to the duties, responsibilities, and qualification requirements of a position." This statutory requirement is reiterated in section 511.607(a)(1), title 5, Code of Federal Regulations (CFR) and cannot be met if the requesting employee no longer performs the work of the position that he or she wishes to appeal. OPM's *Introduction to the Position Classification Standards* (PCSs) states OPM will cancel an appeal when: "The employee is no longer officially assigned to the position, unless there is a possibility of a retroactive benefit...." A retroactive benefit is limited to instances where an employee is wrongfully demoted and suffered a loss of grade or pay (5 CFR 511.703). It is also well settled that employees are not entitled to back pay for periods of misclassification. 5 U.S.C. § 5596(b)(3). *See United States v. Testan*, 424 U.S. 392, 400 (1976) and *Erllyn D. Felder*, B-202685, August 17, 1982. In the instant case, the claimant's right to file a classification appeal ended when he left his position upon retirement from Federal service.

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.