

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

**Claimant:** [name]

**Organization:** [agency component]  
San Francisco Regional Office  
Social Security Administration  
San Francisco, California

**Claim:** Unpaid Leave, Wages and  
Within-Grade Increase

**Agency decision:** N/A

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

**OPM file number:** 07-0049

/s/ for

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

1/29/2008

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Date

The claimant, a former employee of the [agency component], San Francisco Region, Social Security Administration (SSA), in Richmond, California, seeks to file a claim for compensation for a “period of leave that went unpaid,” an adjustment in service computation date, a retroactive within-grade increase, and “all agency contributions to TSP and FERS” based on his assertion his pay was set at the wrong step when he was rehired by SSA on March 19, 2003. Although it is dated October 7, 2005, the U.S. Office of Personnel Management (OPM) received the claim on September 26, 2007. Attachments to the claim request include documents dated December 19, 2005, December 20, 2005, January 25, 2006, February 3, 2006, May 22, 2006, and May 23, 2006. Therefore, we conclude the October 7, 2005, date is erroneous. We received additional information from the claimant’s former servicing human resources (HR) office on October 9, 2007. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The record shows the claimant previously contacted OPM on this matter in an undated letter received by OPM on August 12, 2005. The claimant stated he was a member of a collective bargaining unit during both periods of his employment with SSA, was aware there was a grievance procedure “for SSA employees,” but asserted “No one in either management or AFGE has been willing to share with me the specifics of how to formally proceed with the grievance, nor whether I am required to do so in pursuing my claim.” OPM advised the claimant that the emails he cited in support of his request did not constitute a final agency-level claim denial required before a claim is submitted to OPM for adjudication (see section 178.102(a)(3) of title 5, Code of Federal Regulations). OPM further advised it could not take jurisdiction over compensation and leave claims from 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, and suggested he review a copy of the CBA to determine whether he must use the CBA’s NGP to seek redress on these issues.

In his current request, the claimant provided copies of second- (December 19, 2005) and third-step (January 25, 2005) grievance responses denying the grievance as untimely because it was not filed “within 15 work days from the time you disputed your reinstatement at the GS-11, Step 1, level (January 25, 2005, memorandum).” In a May 23, 2006, letter to the claimant, the union (American Federation of Government Employees, Local 1122), denied the claimant’s request for arbitration of the grievance stating:

We found your grievance was not filed on time. Article 24 of the Union contract required that a grievance on a particular act be filed within 15 work days of the act or date the employee becomes aware of it. You raised the issue of the step level of your reinstatement in 2003. The grievance filed on October 7, 2005 is over two years late.

The letter advised the claimant he could request reconsideration of the decision and, if the union did not hear from him “within five working days of the date of this notice (May 30) your grievance will be withdrawn on a non-discriminatory basis.”

With regard to the issue of timeliness, the claimant states:

Since the Center for Human resources [sic] refused to provide a written determination regarding my request for correction of my leave record, there was no specific incident I could file a grievance against. Regardless, the controlling date for this type of complaint is set by federal regulation and therefore not subject to the collective bargaining agreement.

Since I am no longer an employee of the Social Security Administration I am no longer covered by the collective bargaining agreement an [sic] cannot pursue the grievance and arbitration process outlined therein. For this reason I am seeking resolution through the Office of Personnel Management

The claimant's May 22, 2006, memorandum to the union requesting arbitration, states:

Nowhere in federal regulation nor the National Agreement is it stated that Article 24 of SSA/AFGE National Agreement supersedes Title 5 of the Code of federal Regulations:

**§ 178.104 Statutory limitations on claims.**

(a) Statutory limitations relating the claims generally. Except as provided in paragraphs (b) and (c) of this section or as otherwise provided by law, all claims against the United States Government are subject to the 6-year statute of limitations contained in 31 U.S.C. 3702(b). To satisfy the statutory limitation, a claim must be received by the Office of Personnel Management, or by the department or agency out of whose activities the claim arose, within 6 years from the date the claim accrued.

Therefore, since I notified the agency of this issued [sic] within the statute of limitation per federal regulations, I am requesting that AFGE reconsider its decision to deny arbitration on this matter.

The claimant's rationale attempts to improperly conflate the provisions of the compensation and leave claims administrative settlement process under 5 CFR part 178, implementing the claims settlement provisions of 31 U.S.C. 3702(a)(2), and the NGPs provided for in 5 U.S.C. 7121(a). The claimant's rationale fails to read and apply 5 CFR part 178 in its entirety. As 5 CFR 178.101(b) makes clear, claims subject to NGPs under CBAs entered into pursuant to 5 U.S.C. 7121(a) are not subject to the procedures in 5 CFR part 178. Instead, such compensation and leave grievances are subject to the provisions of the CBA's NGP, including NGP timeframes agreed to by the agency and the union.

Furthermore, OPM cannot take jurisdiction over the compensation or leave claims of Federal employees who are or were subject to a NGP under a 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 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, 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). The fact the claimant is no longer employed by the agency and no longer occupies a bargaining unit position does not affect this jurisdictional determination.

Information provided by the claimant's servicing HR office at our request confirms the claimant was in a bargaining unit position during the period of his claim. The CBA between SSA and AFGE in effect at the time of the claimant's rehiring does not specifically exclude compensation and leave issues from the NGP (Article 24) covering the claimant. Therefore, the claimant's paysetting and leave issues must be construed as covered by the NGPs the claimant was subject to during the claim period. Accordingly, OPM has no jurisdiction to adjudicate the claimant's paysetting and leave claim

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.