



The claimant currently occupies a Lead Quality Assurance Specialist (Aircraft), GS-1910-12, position at [agency component], in [city & State]. In his March 2, 2008, letter to the U.S. Office of Personnel Management (OPM), received by OPM's Center for Merit Accountability on March 11, 2008, the claimant states he is submitting a claim for "back pay and interest from October 2006... and promotion to the permanent grade of GS-1910-12 Step 8 with the promotion date October 15, 2006." The claimant asserts the agency's initial offer of a promotion to the rate of GS-12, step 8, was withdrawn about one week after it was given, but "was genuine and should not have been retracted". The claimant states he accepted a subsequent offer of a promotion to the rate of GS-12, step 6, because he felt he had no other recourse. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

Part 178 of title 5, Code of Federal Regulations (CFR), concerns the adjudication and settlement of claims for compensation and leave performed by OPM under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). Section 178.102(a)(3) of title 5, Code of Federal Regulations (CFR), requires an employing agency to have already reviewed and issued an initial decision on a claim before it is submitted to OPM for adjudication. A claim must be submitted in writing and signed by the claimant (5 U.S.C. 3702(b)(1) and 5 CFR 178.102(a)). The burden of proof is on the claimant to establish the timeliness of the claim, the liability of the United States, and the claimant's right to payment (5 CFR 178.105). We find no record the claimant received a written agency-level (DCMA) decision on the issues raised in his letter to OPM. Instead, the claimant provided a copy of an email from his servicing Department of the Army human resources office explaining the initial offer at GS-12, step 8, was erroneous since it did not comply with controlling statute (5 U.S.C. 5334(b)). However, we may render a decision on this matter based on jurisdictional grounds.

OPM has authority to adjudicate compensation and leave claims for most Federal civilian employees. However, OPM cannot take jurisdiction over the compensation and leave claims of Federal civilian 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. (Emphasis added). This is because the 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 grievance procedures in negotiated CBAs are to 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 employing agency at our request shows the claimant was in and continues to occupy a bargaining unit position during the period of his claim. The CBA between DCMA and the American Federation of Government Employees (AFGE) Council 170, in effect at the time of the claimant's promotion does not specifically exclude compensation and leave issues from the NGP (Article 30) covering the claimant. Therefore, the claimant's pay setting claim must be construed as covered by the NGP the claimant was subject to during the

claim period. Accordingly, OPM has no jurisdiction to adjudicate the claimant's pay setting 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.