

The claimant occupied a Secretary (OA), GS-318-5, position with [agency component], Internal Revenue Service (IRS), U.S. Department of the Treasury, in [city & State]. It appears the claimant is contesting his removal during his probationary period effective March 6, 2008, in a different forum. He asserts he has completed his probationary period due to the IRS's "defective SF-52B requesting... [his] separation" and seeks "wages in the amount of \$6827.36 for March 7, 2008 through April 26, 2008, as well as benefits and accrued annual and sick leave." He indicates an April 30, 2008, email from an IRS Labor Relations Specialist declining to respond to the claimant's April 29, 2008, email request to "remove the agency comments regarding the action [March 6, 2008 Standard Form 50-B, Notification of Personnel Action, Termination During Probation/Trial Period] from both... [his] SF-50 and SF-52" constitutes the "Agency's constructive denial of... [his] claim." The U.S. Office of Personnel Management (OPM) received the claim request on May 12, 2008, and additional information from the claimant's servicing human resources office (HRO) on May 15, 2008. 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 5 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. Based on the information submitted, we find no record of the claimant having filed a signed, written claim with his former employing agency as required by statute and regulation (31 U.S.C. § 3702(b)(1) and 5 CFR § 178.102(a)). An email from an operating-level HRO employee does not constitute a written agency-level denial required to bring a claim before OPM (5 CFR §§ 178.102(a)(3) and (b)). Furthermore, the email in question does not address the matters at issue in this claim request; i.e., wages, annual and sick leave. 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 employees under the provisions of 31 U.S.C. § 3702(a)(2). However, 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 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, 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 former servicing HRO at our request shows the claimant was in a bargaining unit position during the period of his claim. The CBA between the Internal Revenue Service and the National Treasury Employees Union in effect during the period of this claim does not specifically exclude compensation and leave issues from the NGP (Article 41) covering the claimant. Therefore, the claimant request for compensation and leave 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 compensation and leave request.

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.