

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

Claimant: [name]

Organization: [agency component]
Department of the Air Force
[location]

Claim: Environmental Differential Pay

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 09-0009

//Judith A. Davis for

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

2/6/2009

Date

The claimant occupies a Motor Vehicle Operator (Fork Lift Operator), WG-5703-8, job in the [agency component & location]. He seeks environmental differential pay beginning November 14, 2005, for loading and unloading explosives from Department of Defense airlift, contracted aircraft, and allied aircraft; transporting explosives across a military installation and placing them in a munitions storage area; or turning them over to military departments or foreign military powers. He seeks compensation under the provisions of “5 CFR 532.511, OPM Appendix J (Part II: Payment on Basis of Hours in Pay Status, Explosives and Incendiary Materials-Low Degree Hazard 4% Differential for Transporting, Loading, and Unloading Explosives).” The U.S. Office of Personnel Management (OPM) received the claim on August 2, 2007, and additional information from the claimant’s servicing human resources (HR) office on January 22, 2009. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

OPM has authority to adjudicate compensation and leave claims for most Federal employees under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). 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 that matter is or was specifically excluded from the agreement’s NGP. The Federal courts have found Congress intended such a grievance procedure 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 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).

In his claim request, the claimant states he is a: “member of AFGE Local [number] but the Union Vice-President has informed me that Pay [sic] is not a bargain-able [sic] matter for the Union [sic] to appeal, thus OPM appears to be the next grievance level.” Pay levels for most Federal Wage System employees like the claimant are set under law and Government-wide regulations and are not subject to bargaining. However, failure to apply such regulations properly resulting in improper payment to an employee is subject to review as described previously.

Information provided by the claimant’s servicing HR office at our request shows the claimant was in a bargaining unit position during the period of his claim. The CBA between the [agency component] and the American Federation of Government Employees, Local [number], in effect at the time of the claim is silent on and, therefore, does not specifically exclude compensation and leave issues from the NGP (Article 32) covering the claimant. Therefore, the claimant’s environmental pay 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 environmental differential 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.