

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

Claimant: [name]

Organization: [agency component]
U.S. Department of Veterans Affairs
[city & State]

Claim: Expunging of written admonishment, lost pay due to violation of Family and Medical Leave Act (FMLA)

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 09-0038

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

8/28/2009
Date

The claimant occupied a Medical Technologist, GS-644-9, position with the [agency component], U.S. Department of Veterans Affairs, in [city & State], during the claim period. He seeks to file a leave claim with the U.S. Office of Personnel Management (OPM) under the Family and Medical Leave Act (FMLA) and, through his representative, seeks expunging of a July 30, 2008, written admonishment regarding failure to follow leave procedures and being absent without leave, payment for any lost pay, and any other appropriate relief. OPM received the written, signed claim from the claimant's duly authorized representative on July 6, 2009. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

OPM has authority to adjudicate compensation and leave claims for many 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).

Information provided by the claimant's servicing human resources office at our request shows the claimant was in a bargaining unit position during the period of his claim. The CBA between VA and the American Federation of Government Employees National Veterans Affairs Council of Locals, does not specifically exclude compensation and leave issues from the NGP (Article 42) covering the claimant. Therefore, the claimant's FMLA 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 this 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.