

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

**Claimant:** [name]

**Organization:** [agency component]  
Department of the Army  
[installation & State]

**Claim:** Availability pay when occupying  
GS-1812 and GS-1811 positions

**Agency decision:** N/A

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

**OPM file number:** 09-0041

//Judith A. Davis for

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

12/18/2009

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Date

The claimant, currently employed by the [agency], seeks availability pay from October 2001 through January 2009 when he was employed by the Department of the Army (DA) at [installation & State]. In his July 12, 2009, letter to the U.S. Office of Personnel Management (OPM), claimant requests availability pay (AP) for the time he occupied Special Agent for Conservation Law Enforcement, GS-1812 (2001-2003) and Criminal Investigator, GS-1811 (2003-2009) positions. The claimant states he was informed by “the [installation] DES Union Representative” that the representative could not assist him because the claimant “was no longer an employee of the Department of the Army.” For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The record shows the claimant occupied GS-1812 positions from October 9, 2001, until February 5, 2003, when he was reassigned to a GS-1811 position. He left employment with DA effective January 3, 2009, when he began employment with the [agency]. The claimant provided a copy of his January 9, 2009, memorandum to his former DA servicing Civilian Personnel Advisory Center (CPAC) articulating why the claimant believed he was entitled to AP while employed in these GS-1812 and GS-1811 positions at [installation]. The claimant also provided a copy of a May 6, 2009, email response from the CPAC stating the claimant was not eligible for AP because DES had no need for the claimant to be available after hours and because the claimant failed to meet the substantial hours requirement to qualify for AP. The claimant provided a copy of his May 9, 2009, memorandum to a “DES Union Representative” discussing his rationale as to why he should have received AP. The claimant enclosed a copy of the information he had submitted “to CPAC in January for [the union representative’s] review.”

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 compensation and 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 that Congress intended that 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 that the grievance procedures in negotiated collective bargaining agreements 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 CPAC at our request shows the claimant occupied a bargaining unit position during the period of the claim. The CBA between [installation](and other DA components) and the American Federation of Government Employees Local [number] covering the claimant during the period of the claim does not specifically exclude compensation issues from the NGP (Article 16). Therefore, the claimant’s AP request must be construed as covered by the NGP the claimant was subject to during the claim period. The fact the claimant is no longer employed by Fort Stewart does not alter the fact the claim is subject to the dispute

resolution processes of the CBA in effect when his claim arose. *Muniz v. United States*, 972 F.2d 1304 (Fed. Cir. 1992). 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.