

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

Claimant: [name]

Organization: Veterans Affairs Medical Center
U.S. Department of Veterans Affairs
[city & State]

Claim: “Boarding with title 38 standards for social worker,” reversal of 15 minute AWOL and docking of pay on September 22, 2008, and correction of withholding on last pay and lump-sum annual leave checks

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 09-0043

//Judith A. Davis for

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

11/20/2009

Date

In her undated letter to the U.S. Office of Personnel Management (OPM), received on July 23, 2009, the claimant states she retired on May 17, 2009, from the U.S. Department of Veterans Affairs (VA) where she had been employed as a Social Worker. She states she was eligible to be boarded under “hybrid 38 standards for social workers” on February 13, 2009, and asks OPM to do so. Claimant also seeks to reverse her placement on AWOL for 15 minutes on September 22, 2008, resulting in the docking of her pay which she believes is contrary to VA policy, and to “appeal” the amount of withholding on her last pay check and lump-sum annual leave check. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate this claim.

Although 5 U.S.C. §§ 5112 and 5346(c) authorize OPM to decide position classification and job grading appeals, respectively, OPM does not have authority to review title 38 hybrid boarding decisions, practices or procedures. Title 38 hybrid boarding is under the exclusive jurisdiction of VA. 38 U.S.C. §§ 7402 and 7404. OPM’s authority to adjudicate compensation and leave claims flows from a different law, 31 U.S.C. § 3702. The authority in § 3702 is narrow and limited to adjudication of compensation and leave claims and does not include any authority to review title 38 hybrid boarding disputes. Therefore, OPM may not rely on 31 U.S.C. § 3702 as a jurisdictional basis for reviewing title 38 hybrid boarding disputes and, like classification and job grading appeals, does not consider such disputes within the context of the claims adjudication function it performs under § 3702. *Cf. Eldon D. Praiswater*, B-198758, December 1, 1980 (Comptroller General, formerly authorized to adjudicate compensation and leave claims under section 3702, did not have jurisdiction to consider alleged improper job grading); *Connon R. Odom*, B-196824, May 12, 1980 (Comptroller General did not have jurisdiction to consider alleged improper position classification); OPM file number 07-0030, July 27, 2007.

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 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 the grievance procedures in negotiated CBAs 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 employing activity at our request shows the claimant was in a bargaining unit position covered by a CBA between the VA and the National Federation of Government Employees during the period of her claim. Compensation and leave issues were not specifically excluded from the NGP (Article 44) covering the claimant. Therefore, they must be construed as being as being covered by the NGP during the claim period. Accordingly, OPM has no jurisdiction to adjudicate the compensation and leave matters in 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.