

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

**Claimant:** [name]

**Organization:** [agency component]  
Employment Standards Administration  
U.S. Department of Labor  
[city & State]

**Claim:** Compensation due from service as a  
Federal employee.

**Agency decision:** N/A

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

**OPM file number:** 10-0049

//Judith A. Davis for

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Robert D. Hendler  
Classification and Pay Claims  
Program Manager  
Merit System Audit and Compliance

12/6/2010

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Date

On August 19, 2010, the U.S. Office of Personnel Management's (OPM) Merit System Audit and Compliance received a compensation claim from [claimant] for what appears to be compensation and other issues relating to her former employment with the [agency component], Employment Standards Administration, U.S. Department of Labor (DoL), in [city & State]. The claim identifies her request as:

**IN RE:** Transfer of OPM File CSA 8 284 128 Status Code for FECA-PT2 Claims and Title VII Processing Base on OPM Final Decision of the Statement of Authority and (2) based on the laws and regulations cited United States Code: 5 U.S.C. 8347 (d) and 5 (U.S.C. 8461 (e)(1) and Code of Federal Regulations 5 CFR 831.109-110 and 5 CFR 841.305-309 of extent. (Case Management Sanctioned).

The claimant goes on further to state:

This matter has been referred as an ethics violation and Venue now being Supreme based on Jurisdiction of Offense Alert. Ethics and Corrective Actions:

- Title VII (Back Pay Front Pay)
- Federal Employee Compensation Act 2005 to Present
- Federal Employee Compensation Misappropriation 2004 & 2005
- SF-50 Correction Promotion (GS 12)
- Health Benefit Election Enrollment (same)
- (Transfer Case Management Includes (CSA Code Reg., OWCP Code Reg.,  **Agency Code Reg. Ltr.** And OPM Code Reg.

In reaching our compensation decision, we have carefully considered all information furnished by the claimant and her former employing agency at our request.

## **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). As is clear in *Muniz v. United States*, 972 F.2d 1304 (Fed. Cir. 1992), the fact that the claimant is no longer employed by DoL does not remove the Civil Service Reform Act's jurisdictional bar for claims covered by the CBA arbitration and grievance procedures that arose during and from her employment with DoL.

The CBA between the Department of Labor and the National Council of Field Labor Locals American Federation of Government Employees, covering the claimant during her employment with [agency componnet] and in effect during the period of the claim, does not specifically exclude compensation issues from the NGP (Article 15). Therefore, this claim must be construed as covered by the NGP the claimant was subject to during the claim period and OPM has no jurisdiction to adjudicate this claim.

Although we may not render a decision on this claim, we note the claimant appears to request front pay and back pay under Title VII of the Civil Rights Act of 1964 (Title VII). OPM cannot take jurisdiction over this type of claim because the U.S. Equal Employment Opportunity Commission (EEOC) enforces this law.

The claimant also appears to rely on the Federal Employees' Compensation Act (FECA) as a basis to file a claim with us. FECA provides Federal employees injured in the performance of duty with workers' compensation benefits. The FECA is administered by the Office of Workers' Compensation Programs (OWCP), U.S. Department of Labor (DoL); therefore OPM lacks jurisdiction over this type of claim as well.

The claimant's efforts to seek what she identifies as a "Correction Promotion" and what appears to be a correction in her Health Benefit Election Enrollment through the compensation and leave claims process is similarly misplaced as such issues are not reviewable under the claims settlement provisions of 31 U.S.C. § 3702. The claimant's description of events also appears to indicate this matter has been heard by a Federal court of competent jurisdiction, thus raising the possibility this claim is barred by res judicata. Since we do not have jurisdiction to adjudicate this claim, we need not address this issue.

The claimant also references OPM's statutory authority to administer the Civil Service Retirement System (CSRS) under 5 U.S.C. § 8347 and the Federal Employees' Retirement System (FERS) under 5 U.S.C. § 8461. The provisions of 31 U.S.C. § 3702 do not extend to retirement claim disputes as both the CSRS and FERS statutory schemes include their own retirement appeal procedures.

This settlement is final and we consider this matter closed. 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.