U.S. Office of Personnel Management Compensation Claim Decision Under section 3702 of title 31, United States Code

Claimant: [name]

Organization: [agency component]

Department of the Air Force

[installation]

Claim: Back pay for higher level work

performed

Agency decision: Denied

OPM decision: Denied; Lack of jurisdiction

OPM file number: 11-0003

//Judith A. Davis for_____

Robert D. Hendler

Classification and Pay Claims

Program Manager

Merit System Audit and Compliance

<u> 7/1/11</u>

Date

The claimant is employed as a Management Analyst, GS-343-9, with [agency component], Department of the Air Force, in [city & State]. The claimant seeks five years of back pay for performing higher graded work while on detail. The U.S. Office of Personnel Management (OPM) received the claim on November 5, 2010. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The claimant states:

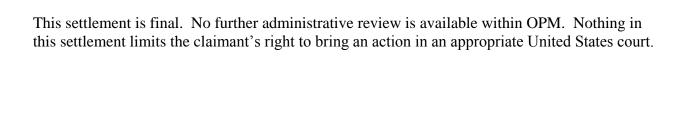
I have a variety of documents to support my claim that I worked at a higher level but [was] never promoted or compensated for my work. When I updated my personnel record back in April '05, I discovered from the Civilian Personnel Office at [agency component] that I had been detailed for the last 5 years as a GS-07 and GS-09, but wasn't getting the pay.

The claimant states that after completing a training course at Manpower School in Biloxi, Mississippi, she was told her position would be changed from the Secretary Series, GS-318, to the Management and Program Analysis Series, GS-343, she would automatically become a Manpower Analyst, GS-11, and her supervisor would "build a Position description to grow with me as a GS-0343-05/7/9/11." The claimant further states that Civilian Personnel at [agency component] said her series could not be changed from GS-318 to GS-343 even though she had been to Manpower School.

OPM has authority to adjudicate compensation and leave claims for Federal employees under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). OPM's adjudication authority is an administrative remedy, not a judicial remedy. See 5 CFR part 178. Section 7121(a)(1) of title 5, United States Code, directs that except as provided elsewhere in the statute, the grievance procedures in a negotiated collective bargaining agreement (CBA) shall be the exclusive administrative remedy for resolving matters that fall within the coverage of the CBA. The Court of Appeals for the Federal Circuit has found the plain language of 5 U.S.C. 7121(a)(1) to be clear, and as such, limits the administrative resolution of a Federal employee's grievances to the negotiated procedures set forth in the CBA. Mudge v. United States, 308 F.3d 1220, 1228 (Fed. Cir. 2002). Further, the Federal Circuit also found that all matters not specifically excluded from the grievance process by the CBA fall within the coverage of the CBA. Id. at 1231. As such, OPM cannot assert jurisdiction over the compensation or leave claims of Federal employees who are or were subject to a negotiated grievance procedure (NGP) under a 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. See 5 CFR 178.101(b).

The CBA between NAGE, Local [number] and [agency component] in effect during the period of the claim does not specifically exclude compensation issues from the NGP (Article 41) covering the claimant. Therefore, the claimant's compensation 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 compensation claim or to intervene in this matter.

¹ It appears the claimant is aware of her rights under the NGP as several of the claimant's attachments are correspondences between her union representative and her employing agency,



and include the first through fourth level grievance decisions on the matter the claimant now seeks to bring before OPM as a compensation claim.