

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

Claimant: [name]

Organization: [agency component]
Veterans Affairs Health Care System
Department of Veterans Affairs
[city & State]

Claim: Request for highest previous rate

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 12-0012

//Judith A. Davis for

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

4/18/2012

Date

The claimant is currently employed in a Program Specialist, GS-301-09, position with the Department of Veterans Affairs in [city & State]. In her January 18, 2012, letter received by the U.S. Office of Personnel Management (OPM) on January 25, 2012, the claimant seeks to challenge the setting of her pay when she was reinstated to Federal employment on October 29, 2006. We received additional information from her employing agency on February 10, 2012. For the reasons discussed herein, the claim is denied.

On September 22, 1989, the claimant resigned from Federal employment as a Program Clerk, GS-303-5, step 6. The claimant returned to Federal service on October 29, 2006, as a Food Service Worker, WG-7408-1, step 1. The claimant believes she was placed in the incorrect step upon her reinstatement and upon subsequent promotions when the agency failed to set her pay using the "highest previous rate that [she] earned as a GS employee" when she was appointed to the WG-7408-1 job.

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, U. S. C., 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 grievance 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 Master Agreements between the Department of Veterans Affairs and the American Federation of Government Employees covering the claimant during her employment with the VA, and in effect during the period of the claim, do not specifically exclude compensation issues from the NGP (Article 42 in the CBA in effect in 2006 and Article 43 in the CBA effective March 2011). Therefore, this claim must be construed as covered by the NGPs the claimant was subject to during the claim period and 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.