

U.S. Office of Personnel Management
Compensation Claim Decision
Under section 3702 of title 31, United States Code and
FLSA Claim Decision Under section 204(f) of title 29,
United States Code

Claimant: [name]

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

Claim: Holiday pay

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 13-0004

//Judith A. Davis for

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

3/28/2013

Date

The claimant is currently employed in a Nurse, VN-610, position with the U.S. Department of Veterans Affairs (VA). In her September 17, 2012, letter to the U.S. Department of Labor, forwarded to and received by the U.S. Office of Personnel Management (OPM) on December 21, 2012, the claimant seeks to file a "Complaint regarding Unfair Labor Practice"¹ due to her not receiving holiday pay for working on Labor Day, September 3, 2012. We received additional information from the agency on December 21, 2012. For the reasons discussed herein, the claim is denied.

The claimant requests an investigation into her complaint. She states because she worked: "the night shift 12:30 PM-08:00 AM, and having worked 09/02/2012 I had worked 12AM-0800 AM of 09/03/2012 I was going to get 12 hours of Holiday pay." She describes a series of subsequent events culminating in her being told: "that my Nurse manager...made the decision [not to pay her the holiday pay], and this is not the first time [the nurse manager] has underpaid me. In this unit some nurses work overtime but do not get paid."

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.) and OPM has authority to adjudicate Fair Labor Standards Act (FLSA) claims under the provisions of 29 U.S.C. § 204(f)². OPM's adjudication authority is an administrative remedy, not a judicial remedy. *See* 5 CFR part 178 and 5 CFR part 551, subpart G. An employee may file an FLSA claim with OPM or his or her employing agency at any time. *See* 5 CFR 551.705. However, section 178.102(a) of title 5, Code of Federal Regulations (CFR), indicates that the claimant's employing agency must review and issue a written decision on a compensation claim before it is submitted to OPM for adjudication. The claimant is responsible for preserving the claim period, by proving the signed, written claim was filed within the applicable statute of limitations. *See* 5 CFR 178.104. The information provided by the claimant with her request does not show she has filed a signed, written claim with the VA component authorized to issue an agency-level decision or that she has received such a decision. Nevertheless, we may render a decision on this claim in its entirety based on lack of jurisdiction.

Section 7121(a)(1) of 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, leave, or FLSA 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

¹ Under 5 U.S.C. § 7104(f)(2), the Federal Labor Relations Authority, not the U.S. Department of Labor (DoL) is authorized to investigate alleged unfair labor practices. *See* Chapter 71-Labor Management Relations of title 5, United States Code.

² As it is unclear from the record which authority the claimant sought review under, OPM has reviewed the claim under both.

claim period, unless the matter is or was specifically excluded from the CBA's NGP. *See* 5 CFR 178.101(b).

Information provided by the agency shows the claimant occupies a bargaining unit position. The Master Agreement 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, does not specifically exclude compensation issues from the NGP (Article 43 in the CBA effective March 2011). 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 adjudicate this claim, we note that OPM's claim adjudication authority under 31 U.S.C. § 3702(a)(2) is limited to deciding if the governing statutes and regulations have been properly interpreted and applied in determining the pay and/or benefits to which an employee is entitled. OPM does not perform investigations of agency pay practices at the request of individual employees as the claimant appears to ask us to do.

As provided in 5 CFR 551.708, this decision is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which OPM administers the FLSA. There is no further right of administrative appeal. This decision is subject to discretionary review only under conditions specified in 5 CFR 551.708.

Those aspects of this decision reviewed under the authority of 31 U.S.C. § 3702(a)(2) and 5 CFR part 178 regarding the Back Pay Act and COLA are not subject to further administrative review. Nothing in this settlement limits the employee's right to bring an action in an appropriate United States court.