

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

Claimant: [name]

Organization: [district]
Office of Field Operations
Office of the Associate Director,
Operations
Citizenship and Immigration Services
U.S. Department of Homeland Security
[city & State]

Claim: Improper Pay Reduction

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 07-0027

/s/ for

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

5/25/2007

Date

The claimant is currently employed in a Citizenship and Immigration Services (OA), GS-1802-5, position with [district], Office of Field Operations, Office of the Associate Director, Operations, Citizenship, and Immigration, U.S. Department of Homeland Security, in [city & State]. He requests his reduction in pay from GS-5, Step 10, to GS-5, Step 7, be reversed. The Office of Personnel Management (OPM) received the claim request on April 14, 2007, and final information from the agency on May 3, 2007. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The claimant states his placement at GS-5, Step 10, “was a negotiated point prior to my accepting the job.” He states: “The only remedy for this Claim is reinstatement of my negotiated pay grade of GS-5 Step 10 and retroactive compensation for all money deducted dating back to the first day of work.”

OPM cannot take jurisdiction over the compensation or leave claims of Federal employees that 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. This is because the courts have found Congress intended such a grievance procedure is 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).

Block 37 of the Notification of Personnel Action provided by the claimant shows he is in a bargaining unit position. Because the NGP (Article 47) in the CBA between the U.S. Immigration and Naturalization Service (now a component of the U.S. Department of Homeland Security) and the National Immigration and Naturalization Service Council, American Federation of Government Employees, AFL-CIO, does not specifically exclude compensation issues from the NGP covering the claimant at the time his claim arose, they must be construed as covered by the NGP the claimant was subject to during the claim period. Therefore, OPM has no jurisdiction to adjudicate any compensation claim potentially flowing from her request.

Although we have no jurisdiction to consider this claim, we note the claimant failed to provide the documentation required to file a claim with OPM. Part 178 of title 5, Code of Federal Regulations (CFR), concerns the adjudication and settlement of claims for compensation and leave. Section 178.102 describes the procedures for submitting claims as well as the documentation that should accompany a claim. Paragraphs (a)(3) of 5 CFR § 178.102 states the claim should include a copy of the agency denial, supporting OPM’s position that the employing agency already has reviewed and issued a claim denial before the claim may be submitted to OPM for adjudication addressing the technical merits of the claim. The e-mails submitted by claimant do not constitute an agency denial within the meaning of (a)(3) of 5 CFR § 178.102.

Claims must be in writing and must contain the signature and address of the claimant or an authorized agent or attorney. 31 U.S.C. § 3702(b)(1); 5 CFR 178.102(a); 69 Comp. Gen. 455 (1990); 18 Comp. Gen. 84, 89 (1938). The purpose of the signature requirement is to “fix

responsibility for the claim and the representations made therein.” *Bialowas v. United States*, 443 F.2d 1047, 1050 (3d Cir. 1971). Based on the information submitted by the claimant, we find no record he has ever submitted a signed claim to his employing agency.

This OPM settlement of the claim is final. No further administrative review is available within OPM. Nothing in this settlement limits the employee’s right to bring an action in an appropriate United States court.