

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

**Claimant:** [name]

**Organization:** [agency component]  
Department of the Air Force  
[installation & State]

**Claim:** Pay setting upon promotion

**Agency decision:** N/A

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

**OPM file number:** 09-0036

//Judith A. Davis for

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

8/28/2009

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Date

The claimant occupies a Contracting Specialist, GS-1102-12, position with the [agency component], Department of the Air Force, at [installation & State]. He seeks to file a compensation claim with the U.S. Office of Personnel Management (OPM) regarding the setting of his pay upon his promotion effective August 31, 2008, to the GS-12 grade level. The claimant believes his pay should have been set at GS-12, step 10, based on his highest previous rate, but the [installation] human resources (HRO) office set his pay at GS-12, step 6. OPM received the claim on June 19, 2009, and additional information from the claimant's servicing human resources office (HRO) on June 22, 2009. For the reasons discussed herein, the claim is denied for lack of 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).

Information provided by the claimant's servicing HRO at our request shows the claimant was in a bargaining unit position during the period of his claim. The CBA between [installation] and the National Association of Government Employees, Local [number], does not specifically exclude compensation and leave issues from the NGP (Article 6) covering the claimant. Therefore, the claimant's pay setting dispute 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 pay setting 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.