

**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:[agency component]
US Army Installation Management
Command
[city & State]

Claim: Overtime compensation

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 11-0016

//Judith A. Davis for

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

5/13/2011

Date

The claimant occupies a Police Officer, GS-0083-5, position with the US Army Installation Management Command on [city & State]. The agency has determined that the claimant is nonexempt from the minimum wage and overtime pay provisions of the Fair Labor Standards Act (FLSA). The claimant seeks to file a claim to recover 17 hours of overtime worked from June 13, 2010 through June 16, 2010, but has not specified the basis for his overtime claim (i.e., title 5 or FLSA). The U.S. Office of Personnel Management (OPM) received the claim on November 18, 2010, and additional information from the US Army Installation Management Command in [agency component] on March 8, 2011. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

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. OPM exercises administrative adjudication authority for FLSA claims under 29 U.S.C. 204(f). *See* subpart G of part 551 of title 5, CFR. 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, 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 claim period, unless the matter is or was specifically excluded from the CBA's NGP. *See* 5 CFR 178.101(b) and 5 CFR 551.703(a).

Information provided by his employing activity at our request shows the claimant occupies a bargaining unit position. The CBA between United States Army Law Enforcement Command, [State], and [State] Teamsters and Allied Workers in effect during the period of the claim does not specifically exclude compensation or FLSA overtime pay issues from the NGP (Article 20) covering the claimant. Therefore, the claimant's overtime compensation 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 this overtime claim.

For those aspects of this decision reviewed under the authority of 29 U.S.C. § 204(f) and 5 CFR part 551, this decision is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which OPM administers the FLSA. *See* 5 CFR 551.708. 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 and 5 CFR part 178 are final and are not subject to further administrative review within OPM. Nothing in this settlement limits the employee's right to bring an action in an appropriate United States court.