

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

**Claimant:** [name]

**Organization:** [agency component]  
Department of the Army  
[city & State]

**Claim:** Environmental Differential Back Pay

**Agency decision:** N/A

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

**OPM file number:** 07-0039

/s/ for

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

9/20/2007

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Date

The claimant is employed in a [job] in the [agency component], Department of the Army, in [city & State]. He requests one year and four months of back pay for environmental differential pay (EDP) he did not receive in 2005 and 2006. The U.S. Office of Personnel Management (OPM) received his claim request on August 9, 2007. We received additional information from his employing activity on August 14, 2007. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

Part 178 of title 5, Code of Federal Regulations (CFR), concerns the adjudication and settlement of claims for compensation and leave performed by OPM under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). Section 178.102(a)(3) of title 5, CFR, requires that an employing agency already has reviewed and issued an initial decision on a claim before it is submitted to OPM for adjudication. Based on the information submitted, we find no record of the claimant having filed a claim with his former employing agency or having received a written agency-level, i.e., Department of the Army-level, denial of claim on the matter at issue in his request. Instead, the claimant states he “went thro [sic] the Chain of Command [,] EEO, Depot Lawyer, Depot IG, Nothing Has Been Done in The Last 4 years.” However, we may render a decision on this matter based on jurisdictional grounds.

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 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, U.S.C., mandates that 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).

Information provided by the claimant’s servicing human resources office at our request shows the claimant was in a bargaining unit position during the period of his claim. The CBA between Anniston Army Depot and the American Federation of Government Employees, Local [number], does not specifically exclude compensation and leave issues from the NGP (Article 23) covering the claimant. Therefore, the claimant’s EDP claim 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 EDP 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.