

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

**Claimant:** [name]

**Organization:** [agency component]  
U.S. Department of Veterans Affairs  
(VA)  
[city & State]

**Claim:** “Retroactively correct my incoming  
highest previous rate (HPR)”

**Agency decision:** N/A

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

**OPM file number:** 10-0019

//Judith A. Davis for

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

3/4/10

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Date

The claimant, currently employed in a Claims Assistant, GS-998-6, position in [agency component], VA, in [city & State], requests the U.S. Office of Personnel Management (OPM) *inter alia* to “retroactively correct [her] incoming highest previous rate” and “[u]nequal hiring practices at the [agency component].” OPM received the claim request on February 2, 2010, and additional information from VA on February 11, 2010. For the reasons discussed herein, the claim is denied.

The claimant describes her efforts to have her Service Computation Date-Leave corrected, her annual leave accrual rate adjusted, and retroactive leave credited due to the activity’s failure to properly credit prior Federal service. The claimant also describes her efforts to have the activity grant her highest previous rate (HPR) upon her initial re-employment with [agency component] and requests: “that HR be **fully accountable** for its error/apply **equitable hiring practices** by retroactively granting my HPR – an action [she believes] would have occurred upon initial hiring had my records been properly presented to the hiring official.” The remedy she seeks is: “**Full accountability** for the HR Specialist’s error and **equity in hiring practices** by [agency component] HR in the form of retroactive credit for [her] prior Federal service, restoration of my HPR effective 04/04/2004 and any corresponding pay adjustment.”

Sections 178.102(a) and (b) of title 5, Code of Federal Regulations (CFR), indicate the claimant’s *employing* agency must already have reviewed a claim and issued an initial decision denying a claim before it is submitted to OPM for adjudication. Information submitted by the claimant does not establish that she has preserved the claim with the agency by filing a written, signed claim as required by statute (section 3702(b)(1) of title 31, United States Code (U.S.C.)) and regulation (5 CFR 178.102(a)). The emails from the claimant raising this “issue” with her employing activity do not satisfy these requirements. Therefore, claimant has not filed a valid claim. Nevertheless, we may render a decision on jurisdictional grounds.

Although OPM has the authority to adjudicate compensation claims for many Federal employees, OPM cannot take jurisdiction over compensation 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 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 (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 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).

Copies of Notification of Personnel Action, Standard Form 50s, submitted by the claimant show she has occupied a bargaining unit position during the period of the claim. The CBA between VA and the American Federation of Government Employees National Veterans Affairs Council of Locals in effect during the period of the claim does not specifically exclude compensation issues from the NGP (Article 42) covering the claimant. Therefore, the claimant’s compensation

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 have no jurisdiction to settle this dispute, we note the claimant appears to request OPM take corrective action of some sort against [agency component] human resources staff. The authority in section 3702 is narrow and limited to adjudication of compensation and leave claims. Section 3702 does not include any authority to take corrective action against agency staff.

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.