

**U.S. Office of Personnel Management
Compensation Claim Decision
Under section 3702 of title 31, United States Code**

Claimant: [name]

Organization: [agency component]
National Aeronautics and Space
Administration (NASA)
[city & State]

Claim: Request for Voluntary Separation
Incentive Pay

Agency decision: N/A

OPM decision: Denied; lack of jurisdiction

OPM file number: 10-0034

//Judith A. Davis for

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

3/31/11

Date

The claimant, who is employed in an Aerospace Engineer (AST, Heat Transfer), GS-861-14, position with NASA's [agency component] in [city & State], requests that the U.S. Office of Personnel Management (OPM) approve his "buyout application" (i.e., a voluntary separation incentive payment (VSIP)) denied by the [agency component's] Engineering Directorate. He states Directorate management would not forward his request to NASA Headquarters for consideration. We received the claim request on May 13, 2010, and additional information from the agency on November 1, 2010. For the reasons discussed herein, the claim is denied.

OPM's authority to adjudicate compensation and leave claims flows from 31 U.S.C. § 3702. The authority in §3702 is narrow and limited to adjudication of compensation and leave claims. It is well settled that "[t]he starting point for interpretation of a statute is the language of the statute itself," and "[a]bsent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Kaiser Aluminum & Chemical Corp. v. Bonjorno*, 494 U.S. 827, 835, 110 S. Ct. 1570, 1575 (1990), citing *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108, 100 S. Ct. 2051, 2056 (1980). Section 3702 does not explicitly define the meaning of compensation for purposes of the statute. Under basic principles of statutory interpretation, undefined terms are understood to have their ordinary meaning. See *Abramson*, 42 Fed. Cl. at 629 (citing *Koyo Seiko Co., Ltd. v. United States*, 36 F.3d1565, 1571 n.9 (Fed. Cir. 1994)).

The American Heritage Dictionary defines compensation in an employment context as: "Something, such as money, given or received in payment or reparation, as for a service or loss." Legal-dictionary.thefreedictionary.com defines compensation as: "payment for work performed, by salary, wages, commission or otherwise." Black's Law Dictionary (9th ed. 2009) defines compensation as:

Remuneration and other benefits received in return for services rendered; esp., salary or wages. [Cases: Labor and Employment k168.] "*Compensation* consists of wages and benefits in return for services. It is payment for work. If the work contracted for is not done, there is no obligation to pay. [Compensation] includes wages, stock option plans, profit-sharing, commissions, bonuses, golden parachutes, vacation, sick pay, medical benefits, disability, leaves of absence, and expense reimbursement."

However, many aspects of compensation as defined in Black's are excluded from the coverage of 31 U.S.C. § 3702. (See 5 U.S.C. § 8347 for Civil Service Retirement System claims adjudication, 5 U.S.C. § 8461 for Federal Employees' Retirement System claims adjudication, 5 U.S.C. § 8913 for Federal Employees' Health Benefits Program administration, and 5 U.S.C. § 8716 for Federal Employees' Life Insurance Program administration.) Therefore, compensation matters under the coverage of 31 U.S.C. § 3702 are circumscribed. Unlike such mandatory matters as severance pay (see 5 U.S.C. § 5595), compensation in the Federal service entails providing compensation while employed or as an inducement to become or remain employed (for example, see 5 U.S.C. §§ 5751-5757). In contrast, VSIP (and similar discretionary payments) are an inducement to leave the rolls of Federal employment. As such, it is inconsistent with the concept of compensation since it is an inducement not to work; and, as such, we find that it is excluded from the coverage of 31 U.S.C. § 3702. Although we have assumed jurisdiction of claims of this nature in the past, a subsequent claim persuaded us that our

decision to do so was erroneous. We have consistently found we lack jurisdiction over claims of this nature ever since 2006.

Although OPM may not render a decision on this claim because VSIP is excluded from coverage of 31 U.S.C. § 3702, the claimant's reliance on our subject-matter jurisdiction over VSIPs because of his characterization of VSIP as a retirement matter is inaccurate. The claimant states that he is covered under a collective bargaining agreement between the Lewis Engineers and Scientists Association (LESA), Local [number], of the International Federation of Professional and Technical Engineers (IFPTE), AFL-CIO & CLS. The claimant states this 1984 labor agreement: "excludes retirement from the negotiated grievance procedure (Section 16.02). Since the remedy sought will result in a voluntary early retirement, the resolution of this matter is not exclusively covered by the negotiated grievance procedure."

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. 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 or leave 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).

That the claimant's receipt of a VSIP would have resulted in his voluntary early retirement from Federal service does not render VSIP a retirement matter excluded by Section 16.02.B. from NGP coverage. The statutory exclusion of retirement matters from NGPs (*See* 5 U.S.C. 7121(c)(2)) recognizes OPM's authority over Civil Service Retirement System claims adjudication under 5 U.S.C. § 8347 and Federal Employees' Retirement System claims adjudication under 5 U.S.C. § 8461, and does not extend to the separate matter of VSIPs. The NASA 2010 Separation Incentive (Buyout) Agreement provided by the claimant makes clear VSIP can be offered to and accepted by employees not eligible for retirement. Our review shows the CBA between NASA and LESA, Local [number], of the IFPTE does not specifically exclude compensation issues from the NGP (Article 16) covering the claimant. Accordingly, even if VSIP was to be considered compensation and thus a claim within OPM's authority under 31 U.S.C. 3702, which it is not, OPM would have no jurisdiction to adjudicate this claim because the claimant's VSIP claim must be construed as covered by the NGP the claimant is subject to.

This settlement 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.