

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

Claimant: [name]

Organization: [agency component]
Federal Correctional Institution-
[city]
Federal Bureau of Prisons
U. S. Department of Justice
[city & State]

Claim: Agency “withholding 48 hours of pay”

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 13-0013

/s/ Judith A. Davis for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Agency Compliance and Evaluation
Merit System Accountability and Compliance

9/18/13

Date

The claimant, currently employed with the Federal Bureau of Prisons, U.S. Department of Justice, seeks to challenge his agency's "decision to place [him] in absent without official leave status during the pay period 24, 11/182012 [sic] to 12/01/2012 and withholding 48 hours of pay despite [his] having submitted a proper medical certificate and having a leave balance of 64 hours of sick leave and 252 hours of annual leave at that point." We received the claim on January 16, 2013, and additional information from the agency on January 25, 2013. For the reasons discussed herein, the claim is denied.

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, 5 U.S.C. §7121(a)(1) 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 grievance 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).

Information provided by the agency shows the claimant occupies a bargaining unit position. The Master Agreement between Federal Bureau of Prisons and Council of Prison Locals, American Federation of Government Employees, covering the claimant during his employment with the agency, and in effect during the period of the claim, does not specifically exclude leave issues from the NGP (Article 31). Therefore, this 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.

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.