

Date: January 14, 2003

Claimant: [name]

File Number: 02-0038

OPM Contact: Deborah Y. McKissick

The claimant was an employee of the Department of Veterans Affairs (VA) during the claim period. The claimant disagrees with VA's decision regarding the pay rate she received while employed at the [medical center] in [city & State](Medical Center). The Office of Personnel Management (OPM) received the compensation claim on August 16, 2002, and the agency administrative report on November 25, 2002. For the reasons discussed herein, we do not have jurisdiction to adjudicate your claim.

The claimant believes that her pay was set improperly during her employment with the Medical Center, because it was set at a lower step than the rate her previous Federal positions. According to the claim, in February 1996, the claimant transferred from an Accounting Technician, GS-4, step 10, position with the Department of the Army to a GS-5 position at the Medical Center. When the claimant received her first paycheck at the Medical Center, she noticed that her pay was set at GS-5, step 1. On April 9, 1996, the claimant was informed that her pay was reset at GS-5, step 4. However, the claimant believes that her pay should have been set at GS-5, step 6.

The claimant believes her pay rate set at the Medical Center continues to negatively affect her pay. The claimant later transferred from the Medical Center to the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), as a GS-6. The claimant expressed her concern that she believes her pay rate is still incorrect. She was informed that the matter must be resolved by the Medical Center before CDC could take any kind of retroactive pay action.

The administrative report stated that the claimant was selected from an OPM Certificate of Eligibles for Budget and Fiscal Clerk, GS-503-5, step 1. When the agency verified the claimant's prior Federal service, her pay was adjusted to GS-5, step 4, in accordance with the "highest previous rate" provisions of OPM and VA pay regulations.

Based on the information provided by the Medical Center, the claimant was a member of a bargaining unit, the American Federation of Government Employees, AFL-CIO, and was covered by a collective bargaining agreement during the time of the claim. Moreover, this pay matter was not excluded from negotiated grievance procedures under

the agency's collective bargaining agreement. *See Article 42 of the Agreement between the U.S. Department of Veterans Affairs and American Federation of Government Employees, AFL-CIO.*

OPM cannot take jurisdiction over the claim of Federal employees who are or were subject to a negotiated grievance procedure under a collective bargaining agreement between the employee's agency and labor union, unless that matter is or was specifically excluded from the agreement's grievance procedure. This is because the courts have found that Congress intended that 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*, 498 U.S. 811 (1990), construing therein the provision in the Civil Service Reform Act codified at 5 U.S.C. § 7121(a). That Act mandates that the grievance procedures in negotiated collective bargaining agreements be the exclusive remedy for matters covered by the agreements. *Accord, Paul D. Bills, et al.*, B260475 (June 13, 1995); *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992). Accordingly, OPM cannot assert jurisdiction over, or issue a decision concerning, this matter.

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.