

Compensation Claim Decision
Under section 3102 of title 31, United States Code

Claimant: [name]

Organization: [office]
Overseas Private Investment Corporation
Washington, DC

Claim: Request for Waiver of Debt

Agency decision: Partial Denial

OPM decision: Denial due to lack of jurisdiction

OPM contact: Robert D. Hendler

OPM file number: 06-0019

/s/ Judith A. Davis for

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

4/11/2006

Date

The claimant was formerly employed in a [GS-14] position in the [office], Overseas Private Investment Corporation (OPIC), in Washington, DC. In a letter dated February 1, 2006, the agency submitted a claim on her behalf to the Office of Personnel Management (OPM). In its cover letter, the agency stated that her pay was incorrectly set at Step 9 rather than Step 6 when she transferred from the Department of the Treasury to OPIC on June 16, 2002, and subsequently received an erroneous within-grade increase to Step 10 on July 25, 2004. The agency indicated that on July 28, 2005, she requested a waiver of overpayment in advance of OPIC issuing a notice of indebtedness and issued that notice on August 19, 2005, in which it waived \$5,750 of a \$17, 213.18 overpayment, leaving a balance of \$11, 463.18. The agency stated:

[Claimant] has requested a waiver of the remaining \$11,463.18; however, OPIC has denied her request. Therefore, OPIC requests, on behalf of [claimant], that OPM review the record and rule on the merits.

In a letter dated February 13, 2006, a steward of the American Federation of Government Employees (AFGE), Local 1534, OPIC Bargaining Unit, stated the union was the exclusive representative of OPIC's bargaining unit; neither AFGE nor the claimant had consented to submission of the claim to OPM; was concerned that AFGE was not provided copies of certain attachments; and that:

...both Union and Employee are in dispute with many of OPIC's statements (including the existence, collection and waiver of the alleged "debt" and the Employee's bargaining unit status). (We also noted that a number of important details/information were omitted from the claim.)

AFGE advised that it and the claimant had filed a grievance which was not settled, and that the agency and the union were awaiting receipt of a list of arbitrators.

In its February 15, 2006, response to our February 2, 2006, request for a copy of the collective bargaining agreement (CBA), the agency pointed to and reiterated its bargaining unit status position taken in its February 1, 2006, claim rationale:

According to the record, [claimant] was placed in the bargaining unit and was a dues-paying member. OPIC contends, however, that the claimant was not properly in the bargaining unit and should have been excluded from the bargaining unit.

OPM's authority to adjudicate compensation and leave claims flows from 31 U.S.C. § 3702 which is narrow and does not include any authority to decide, as the agency appears to request, a determination on the claimant's bargaining unit status. Such decisions are the province of the Federal Labor Relations Authority (see 5 U.S.C. § 7112). As stipulated in 5 CFR 178.105, "the settlement of claims is based upon the written record only." Standard Form 50s provided by the agency show the claimant occupied a bargaining unit position during her employment with OPIC. Therefore, for purposes of the compensation and leave claims settlement process, we must treat the claimant as covered by the CBA between OPIC and AFGE, Local 1534. 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 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 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*, *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, United States Code (U.S.C.) mandates that the grievance procedures in negotiated collective bargaining agreements 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).

The CBA between OPIC and AFGE, Local 1534, does not specifically exclude compensation and leave issues from the NGP covering the claimant. Therefore, they must be construed as covered by the NGP that the claimant was subject to during the claim period. Accordingly, OPM has no jurisdiction to adjudicate any compensation claim potentially flowing from the agency's request.

We note the agency stated it was filing the claim on behalf of the claimant. As provided for in 5 CFR 178.102(b):

At the discretion of the agency, the agency may *forward* (emphasis added) the claim to OPM on the claimant's behalf. The claimant is responsible for ensuring that OPM receives all the information requested in paragraph (a) of this section.

Such a filing rests upon there being a claim and agreement by the claimant to forward the record to OPM for settlement. The record provided to OPM shows the claimant submitted a waiver request, rather than a claim, to the agency. Therefore, there was no claim to forward to OPM on the claimant's behalf.

This settlement is final. No further administrative review is available within the OPM. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States Court.