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

Claimant: [name]

Organization: [directorate]
Letterkenny Army Depot
Department of the Army
Letterkenny Army Depot, Pennsylvania

Claim: Restoration of Restored Leave

Agency decision: Denial

OPM decision: Denial; Lack of Jurisdiction

OPM contact: Robert D. Hendler

OPM file number: 06-0054

/s/ for

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

9/8/2006

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Date

The claimant is employed in a [job]in the [directorate], Letterkenny Army Deport (LEAD), Department of the Army, in LEAD, Pennsylvania. As advised in a June 29, 2006, letter from the Department of the Army's Office of the Inspector General, the claimant's congressional representative requested the Office of Personnel Management (OPM) review the LEAD decision denying restoration of 93.90 hours of forfeited restored annual leave. We received the claim request July 6, 2006, and additional information from LEAD on July 21, 2006. For the reasons discussed herein, we do not have jurisdiction to consider this claim.

A February 27, 2006, letter from the Commanding Officer, LEAD, indicates the claimant "forfeited BRAC [Base Realignment and Closure] restored annual leave [93.90 hours] because: " the Comptroller General has consistently held that restored annual leave unused at the expiration of the established time limit is forfeited with no further right of restoration regardless of the reason for forfeiture."

Part 178 of title 5, Code of Federal Regulations, concerns the adjudication and settlement of claims for compensation and leave. Section 178.102 describes the procedures for submitting claims as well as the documentation that should accompany a claim. Paragraph (a)(3) of section 178.102 specifies this documentation should include a copy of the final written agency denial of the claim. Therefore, paragraph (a)(3) denotes that an employing agency already has reviewed and issued an initial decision on a claim before it is submitted to OPM for adjudication. In the instant case, the documentation submitted includes an activity-level rather than an agency-level decision. Department of the Army agency-level claims authority is vested in the Office of the Deputy Chief of Staff, G-1, Assistant G-1 for Civilian Personnel, Policy and Program Development Division. The record does not show that this office has reviewed or issued a decision on this claim, and OPM may decline to review a claim where the employing agency has not issued a final written decision denying the claim. In addition, OPM's response to this request can be rendered on other jurisdictional grounds, as follows.

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 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 title 5, United States Code (U.S.C.) mandates that 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).

Information provided by LEAD at our request shows the claimant was in and continues to occupy a bargaining unit position covered by a CBA between the LEAD and the National Federal of Federal Employees, Local 1429. Section 3(b) of the NGP states:

> …matters covered by a statutory appeals procedure are excluded. Such matters include, but are not limited to: discrimination complaints, appeals from demotions or removal based upon unacceptable performance, and appeals involving suspensions for more than fourteen calendar days, demotions, and removal under adverse action procedures.

Pay and leave claims are a form of "appeal" of an agency's decision on those matters. However, all of the examples in section 3(b) relate to appeals based on hiring, firing, conduct and performance of duties for which appellate processes are specifically authorized and described in statute, e.g., chapters 43, 75, and 77of title 5, United States Code. This is in contrast to compensation and leave claims where the procedures are authorized by statute but only described in regulation. While the examples listed are not exhaustive, the contract wording is ambiguous and cannot be said to specifically exclude compensation and leave matters from the scope of the NGP. This ambiguity requires us to conclude that, because compensation and leave issues are not specifically excluded from the NGP covering the claimant, they must be construed as covered by the NGP the claimant was subject to during the claim period. Since the NGP was available to the claimant when the claim arose and was his exclusive administrative remedy, OPM has no jurisdiction to adjudicate his leave claim.

Although we have no claims settlement jurisdiction in this case, we note the underlying issue is the claimant's disagreement with the activity's position that restored leave unused at the expiration of the established time limit for its use is forfeited with no further right to restoration regardless of the reason for forfeiture. This position is consistent with controlling regulations (5 CFR 630.306) which have the force and effect of law. *See Dr. James A. Majeski*, B-247196, April 13, 1992; *Matter of Patrick J. Quinlan*, B-188993, December 12, 1977; OPM File Number 02-0022, June 19, 2002.

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.