

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

Claimant: [name]

Organization: [agency component]
U.S. Department of Labor
[city & State]

Claim: Pay setting upon promotion

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 07-0048

/s/ for

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

4/25/2008

Date

The claimant occupies an Electrical Engineering, GS-850-13, position in the [agency component], U.S. Department of Labor (DoL), in [city & State]. He seeks to file a compensation claim regarding the setting of his pay upon his promotion effective September 17, 2006, to the GS-13 grade level at which time DoL removed him from the coverage of the special rate table 0422 applicable to Electrical Engineers. The U.S. Office of Personnel Management (OPM) received the claim on September 17, 2007, and additional information from the claimant's servicing human resources (HR) office on September 25, 2007. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

OPM has authority to adjudicate compensation and leave claims for most Federal employees under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). However, 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 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 5 U.S.C. mandates grievance procedures in negotiated CBAs are to 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 the claimant's servicing HR office at our request shows the claimant was in a bargaining unit position during the period of his claim. The CBA between the U.S. DoL and the National Council of Field Labor Locals (NCFLL), AFGE, AFL-CIO in effect at the time of the claimant's promotion does not specifically exclude compensation and leave issues from the NGP (Article 15) covering the claimant. (The NGP (Article 15) in the CBA effective October 1, 2006, between the NCFLL and DoL is also silent with regard to compensation and leave claims). Therefore, the claimant's paysetting must be construed as covered by the NGPs the claimant was subject to during the claim period. Accordingly, OPM has no jurisdiction to adjudicate the claimant's paysetting 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.