

Date: September 8, 2003
Claimant: [name]
File Number: 03-0016
OPM Contact: Deborah Y. McKissick

The claimant was an employee of the Department of the Navy. The claimant is requesting correction of his restored leave account. The Office of Personnel Management (OPM) received the claim on January 28, 2003, and received the agency administrative report on June 4, 2003. A copy of the covered collective bargaining agreement accompanied the report. For the reasons discussed herein, the claim is denied.

Based on the information provided by the agency, the claimant was covered by a collective bargaining agreement during the time of the claim. The claimant's issues concerning correction of his restored leave account were not explicitly excluded from the negotiated grievance procedures under the agency's collective bargaining agreement. *See Article 28, Section 1, of the Agreement between Naval Undersea Warfare Center Division, Newport and National Association of Government Employees Service Employees International Union Local R1-134.*

OPM cannot take jurisdiction over the claims of Federal employees that 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*, *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 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.*, 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.