

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

Claimant: [name]

Organization: [agency component]
Indian Health Service
U.S. Department of Health and Human
Services
[city & State]

Claim: Compensation for Overtime

Agency decision: Denied

OPM decision: Denied; Lack of Jurisdiction

OPM contact: Robert D. Hendler

OPM file number: 06-0023

/s/ for

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

9/28/2006

Date

The claimant is employed in a [position] in the [agency component], Indian Health Service (IHS), U.S. Department of Health and Human Services (DHHS), in [city & State]. He requests the Office of Personnel Management (OPM) overturn his agency's decision to deny him authorized and approved compensatory time he earned from March 2000 through February 2005. We received the claim on March 8, 2006, and the agency administrative report on May 9, 2006. For the reasons discussed herein, we do not have jurisdiction to consider this claim.

The claimant states [office] management "consistently and continually authorized and approved my working many, many hours of overtime." He noticed in November 2003 "many of the authorized and approved compensatory hours I had been working (we were not allowed to request overtime) were simply not showing up from my Earnings and Leave Statement (E&L)." He states if he had been notified that he "would be working for no compensation, I would not have agreed to their requests to perform the work." The claimant asserts:

Management should have known about the biweekly pay limitation and taken actions to ensure I would be fairly compensated for the work performed...I am requesting back pay, interest and government retirement contribution percentage for all of the hours that were lost that should have been included in my pay since 2000.

He describes the actions taken by his activity and IHS to resolve this issue, including:

I attempted to resolve this issue through our local negotiated grievance procedure however, my request was denied saying it was not timely filed-even though I had been trying to get this resolved for over 18 months. In addition, OIT management indicated that they were denying my request because of a bi weekly pay limitation. They stated by law, they could not pay me for all the hours they had authorized me to work over the years – even though they had requested and approved all of the work to be performed.

The attachments to the claimant's request included a December 27, 2005, letter from the Director, HIS, stating both HIS and DHSS's Program Support Center had adjudicated his claim, and advised: "The next level of appeal is the Office of Personnel Management (OPM)." 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 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 (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 the grievance procedure in a negotiated CBA shall be the exclusive administrative procedure for resolving matters covered by the agreement. *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 agency at our request shows the claimant was in and continues to occupy a bargaining unit position covered by a CBA between DHHS, IHS, [agency component], and the Laborer's International Union of North America, AFL/CIO, Local Union [number], [city

& State]. Because compensation and leave issues are not specifically excluded from the NGP (Article XVII) 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 remedy, OPM has no jurisdiction to adjudicate his compensation claim.

Although we have no claims settlement jurisdiction in this case, we note the claimant believes the fact an agency manager authorized and approved the overtime in question obligates payment for all the time he worked. The compensation which the claimant seeks is barred by 5 U.S.C. § 5547(a) and 5 CFR 550.105, under which GS employees, may receive certain types of premium pay in a pay period only to the extent that the aggregate of basic pay and premium pay for the pay period does not exceed the greater of the **biweekly** rate payable for (1) GS-15, step 10 (including any applicable locality payment or special rate supplement), or (2) level V of the Executive Schedule. This pay limitation pertains to compensatory time granted pursuant to 5 U.S.C. § 5543 for irregular or occasional work for which overtime compensation is due.

In essence, the claimant seeks to estop the Federal Government from denying him benefits; i.e., not compensating him for all hours of work he performed. Agencies have no authority to authorize payment based solely on equitable considerations. 63 Comp. Gen. 50 (1983). Detrimental reliance is not a legal basis for the payment of appropriated funds. 56 Comp. Gen. 943 (1977). It is well established that the Government cannot be estopped from denying benefits that are not permitted by law, even where the claimant relied on mistaken advice from a Government official or agency. A claim for payment of money from the U.S. Treasury contrary to a statutory appropriation is prohibited by the Appropriations Clause of the Constitution, Art. I, 9, cl. 7. Recognition of equitable estoppel could nullify the clause if agents of the Executive branch were able, by their unauthorized oral or written statements, to obligate the U.S. Treasury contrary to the wishes of Congress. See *Office of Personnel Management v. Richmond*, 496 U.S. 414 (1990), *Falso v. Office of Personnel Management*, 116 F.3rd 459 (Fed Cir. 1997), and *Melvin Ackley, Jr*, B-200817, April 21, 1981

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.