

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

Claimant: [name]

Organization: [agency component]
U.S. Department of Housing and Urban
Development
Washington, DC

Claim: Retroactive Pay from the Time
Eligible for Career Ladder Promotion

Agency decision: N/A

OPM decision: Claim Denied; Lack of Jurisdiction

OPM contact: Robert D. Hendler

OPM file number: 07-0013

/s/ Robert D. Hendler

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

February 9, 2007

Date

The claimant is employed in a [GS-14 position] with a Washington, DC, component of the U.S. Department of Housing and Urban Development (HUD). She is duty stationed in [city & State] with HUD Region [number]. She seeks to file a claim with the Office of Personnel Management (OPM) to obtain compensation from her agency from July 16, 2001, forward, the date she became eligible for a career ladder promotion to GS-15. We received her claim request on February 6, 2007. For the reasons discussed herein, we do not have jurisdiction to consider this claim.

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 the agency at our request shows the claimant was in and continues to occupy a bargaining unit position covered by a CBA between HUD Region [number] and the National Federation of Federal Employees Local [number]. The CBA's NGP (Article 9, Section 9.02: Exclusions) does not specifically exclude compensation issues from the scope of the NGP. This conclusion is reinforced by the fact the claimant, in her request to OPM, included a copy of a union grievance she filed on this same matter on January 9, 2007. Therefore, we do not have the authority to consider or settle this claim.

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.