

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

**Claimant:** [name]

**Organization:** [agency component]  
U.S. Department of Veterans Affairs  
[city & State]

**Claim:** Back pay for performing higher  
graded work

**Agency decision:** N/A

**OPM decision:** Denied; Lack of Jurisdiction

**OPM file number:** 08-0039

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

      12/4/2008        
Date

The claimant currently occupies a Program Support Assistant, GS-303-7, position in [agency component], U.S. Department of Veterans Affairs (VA), in [city & State]. She seeks assistance from the U.S. Office of Personnel Management (OPM) to obtain back pay for performing GS-7 grade level work prior to her promotion to the GS-7 grade level on October 20, 2006. The claimant states she discovered the only position description (PD) on file for her position was at the GS-7 grade level and states she was told by her human resources office no action was taken:

...to downgrade the position to a GS-6, and that could not be done anyway since the person in my position manages the Home Improvement Structural Application Program (HISA). This aspect of the PD constitutes the position being grade 7. Therefore, I was performing from a GS-7 PD the entire time.

She also states she accepted the position March 6, 2004, and:

the first year would have been considered a training year from March 6, 2004 to March 2005 at a grade GS-6. However, from March 2005 until October 20<sup>th</sup> 2006 when I finally received my grade GS-7, my supervisor though I would surely be reimbursed for this time...Unfortunately, I found out from HR that I am not going to be reimbursed because the Director does not pay back-pay.

OPM received the request on May 28, 2008. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

Part 178 of title 5, Code of Federal Regulations (CFR), concerns the adjudication and settlement of claims for compensation and leave performed by OPM under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). Section 178.102(a)(3) of 5 CFR requires an employing agency to have already reviewed and issued an initial decision on a claim before it is submitted to OPM for adjudication. Based on the information submitted, we find no record of the claimant having filed a signed, written claim with her former employing agency as required by statute and regulation (31 U.S.C. § 3702(b)(1) and 5 CFR § 178.102(a)). However, we may render a decision on this matter based on jurisdictional grounds.

OPM has authority to adjudicate compensation and leave claims for most Federal employees under the provisions of 31 U.S.C. § 3702(a)(2). 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 the 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 her employing activity at our request shows she occupied and continues to occupy a bargaining unit position. The CBA between VA and the American Federation of Government Employees National Veterans Affairs Council of Locals in effect during the period of the claim does not specifically exclude compensation and leave issues from the NGP (Article 42) covering the claimant. Therefore, the claimant's back pay request must be construed as covered by the NGP the claimant was subject to during the claim period. Accordingly, OPM has no jurisdiction to adjudicate the claimant's compensation 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.