

**U.S. Office of Personnel Management
Leave Claim Decision
Under section 3702 of title 31, United States Code**

Claimant: [name]

Organization: [component]
[installation]
Department of the Air Force
[installation & State]

Claim: Restoration of annual leave

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 14-0034

/s/ Linda Kazinetz for _____
Robert D. Hendler
Classification and Pay Claims
Program Manager
Agency Compliance and Evaluation
Merit System Accountability and Compliance

6/10/14 _____
Date

The claimant seeks restoration of 179 hours of annual leave “due to the reduction of [his] SCD [service computation date]” which he asserts was an improper action by his employing agency, the Department of the Air Force. We received the claim on April 24, 2014, and information from the agency at our request on April 29 and 30, 2014. For the reasons discussed herein, the claim is denied.

OPM settles Federal civilian employee compensation and leave claims under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.), and part 178 of title 5, Code of Federal Regulations (CFR). Section 178.102(a) of 5 CFR indicates that the claimant’s employing agency must review and issue a written decision on a compensation claim before it is submitted to OPM for adjudication. The claimant is responsible for preserving the claim period by proving the signed, written claim was filed within the applicable statute of limitations. *See* 5 CFR 178.104. The information provided by the claimant with his request does not show he has filed a signed, written claim with the agency component authorized to issue an agency-level decision or that he has received such a decision. Nevertheless, we may render a decision on his claim based on lack of jurisdiction.

Section 7121(a)(1) of title 5, U. S. C., directs that except as provided elsewhere in the statute, the grievance procedures in a negotiated collective bargaining agreement (CBA) shall be the exclusive administrative remedy for resolving matters that fall within the coverage of the CBA. The Court of Appeals for the Federal Circuit has found the plain language of 5 U.S.C. § 7121(a)(1) to be clear, and as such, limits the administrative resolution of a Federal employee’s grievance to the negotiated procedures set forth in the CBA. *Mudge v. United States*, 308 F.3d 1220, 1228 (Fed. Cir. 2002). Further, the Federal Circuit also found that all matters not specifically excluded from the grievance process by the CBA fall within the coverage of the CBA. *Id. at 1231*. As such, OPM cannot assert jurisdiction over the compensation or leave claims of Federal employees who are or were subject to a negotiated grievance procedure (NGP) under a 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 CBA’s NGP. *See* 5 CFR 178.101(b).

The claimant states: “I am NOT nor have I ever been a Union Member. If I have a collective bargaining agreement, or any grievance procedures, I am totally unaware of either.” That the employee was not a union member (as opposed to a member of the collective bargaining unit represented by the union) has no bearing on and does not control this determination. The Standard Form 50 submitted by the claimant shows in block 37 that he occupies a bargaining unit position. The CBA between [installation] and the American Federation of Government Employees, Local [number], covering the claimant during the period of the claim does not specifically exclude compensation issues from the NGP (Article 15). Therefore, this claim must be construed as covered by the NGP the claimant was subject to during the claim period, and OPM has no jurisdiction to adjudicate this 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.