

Date: September 16, 2002

Matter of: [name]

File Number: 02-0009

OPM Contact: Deborah Y. McKissick

The claimant is a [GS-11] with the Department of the Army at [installation]. He is requesting back pay for misclassification of his position. The Office of Personnel Management received the claim on January 22, 2002, and received the agency administrative report on June 27, 2002. We received a copy of the covered collective bargaining agreement on August 15, 2002. For the reasons stated below, we do not have jurisdiction to consider this claim.

The claimant believes the agency placed him in the wrong step when he was promoted from a [GS-9], step 10, position to a [GS-11], step 5, position.

The agency administrative report stated that the claimant's pay was set in accordance with 5 CFR 530.306(f). The claimant was promoted from a position which was not covered by a special salary rate schedule to a position covered by a special salary rate schedule.

Based on the information provided by the claimant's agency, the claimant's position is in a bargaining unit covered by a collective bargaining agreement (CBA) during the time of the claim. The U.S. Court of Appeals for the Federal Circuit has determined that if a person filing a claim was a bargaining unit member during any part of the complaint period, the unit was covered by a CBA, and the agreement did not explicitly exclude the issues being reviewed by OPM from its negotiated grievance procedure (NGP), then the person's administrative avenue of redress is limited to the NGP. This matter was not excluded from negotiated grievance procedures under the agency's collective bargaining agreement. *See Article XXX, Section 3 of the Agreement between the Red River Army Depot and the National Federation of Federal Employees, Local 2189*, dated September 20, 2001.

OPM cannot take jurisdiction over the claim of Federal employees that are or were subject to an NGP under a CBA 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 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*, 498 U.S. 811 (1990),

construing therein the provision in the Civil Service Reform Act codified at 5 U.S.C. § 7121(a). That Act mandates that the grievance procedures in negotiated collective bargaining agreements be the exclusive remedy for 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). Accordingly, OPM cannot assert jurisdiction over, or issue a decision concerning, this matter.

This settlement is final. No further administrative review is available within the Office of Personnel. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States Court.