

Date: December 22, 2004

Claimant: [name]

File Number: 05-0002

OPM Contact: Robert D. Hendler

The claimant was formerly employed in a [position] with the Naval Surface Warfare Center in Dahlgren, Virginia. He is filing a claim requesting that the U.S. Office of Personnel Management OPM award him back pay from October 5, 2003, until June 28, 2004, for failure to pay him from the correct pay table, and Fair Labor Standards Act (FLSA) back pay for lunch periods and work before and after his shift to draw his weapon and to turn in his weapon. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate the remaining issues of this claim.

OPM is responsible for reviewing and adjudicating all claims related to compensation and leave for civilian positions under the provisions of 31 U.S.C. 3702. However, OPM cannot take jurisdiction over the compensation, leave, or FLSA claims of Federal employees *that are or were subject* to a negotiated grievance procedure 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 negotiated grievance procedure (NGP). (Emphasis added). This is because the 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, 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 title 5, United States Code (U.S.C.) mandates that the grievance procedures in negotiated CBA's be the exclusive administrative procedures for resolving matters covered by the agreements. *Accord*, *Paul D. Bills, et al.*, B260475 (June 13, 1995); *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992).

During the claim period, the claimant occupied a position covered by a CBA between the American Federation of Government Employees (AFGE), Local 2096 and the Naval Surface Warfare Center. The claimant cites the CBA at 16.10b as proof that the CBA excludes compensation and FLSA matters from the scope of the NGP, thereby giving OPM jurisdiction over his claim. However, review of the CBA shows that 16.10 covers grievances regarding promotions. Because the CBA's NGP (Article 23) does not

specifically exclude compensation and FLSA issues, it must be construed as covered by the NGP. Accordingly, OPM has no jurisdiction to adjudicate his compensation or FLSA claim.

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