



United States
**Office of
Personnel Management**

Washington, DC 20415

Date: February 23, 2005

Claimant: [name]

File Number: 04-0001

OPM Contact: Robert D. Hendler

The claimant is employed in a [position] with the Department of Veterans Affairs (VA), James E. Van Zandt Medical Center, in Altoona, Pennsylvania. She requests that the U.S. Office of Personnel Management (OPM) restore her steps in her current grade based on steps held at her highest grade within the Federal Government. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate this claim.

OPM is responsible for reviewing and adjudicating all claims related to compensation and leave for civilian positions under the provisions of section 3702 of title 31, United States Code (U.S.C.). However, OPM cannot take jurisdiction over the compensation or leave claims of Federal employees *that are or were subject* to a negotiated grievance procedure (NGP) under a collective bargaining agreement 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. (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 bane), *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, mandates that the grievance procedures in negotiated collective bargaining agreements 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, and continues to occupy, a position covered by a collective bargaining agreement between the American Federation of Government Employees, Local 1862, and the VA. Because compensation and leave issues are not specifically excluded from the scope of the NGP covering the claimant, they must be construed as covered by the NGP that the claimant was and continues to be subject to during the claim period. Therefore, OPM has no jurisdiction to adjudicate the compensation claim.

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