



United States
**Office of
Personnel Management**

Washington, DC 20415

Date: January 25, 2005

Claimant: [name]

File Number: 04-0018

OPM Contact: Robert D. Hendler

The claimant is employed in a [position] with the Securities and Exchange Commission (SEC) in Chicago, Illinois. She requests that the U.S. Office of Personnel Management (OPM) restore annual leave taken by her agency as the result of the implementation of "pay parity." The claimant states the agency incorrectly removed 15 hours of annual leave to "repay" compensatory time that was correctly authorized, earned, and used, because the agency determined she was no longer eligible to receive the compensatory time. 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 5 U.S.C. 3702. 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 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 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 National Employees Treasury Union (NTEU), Local 2096 and the SEC. Because compensation and leave issues are not specifically excluded from 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 Office of Personnel Management. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States Court.