

Date: March 7, 2005

Claimant: [name]

File Number: 05-0006

OPM Contact: Robert D. Hendler

The claimant retired from the Federal service on June 30, 2004. He requests that the U.S. Office of Personnel Management (OPM) direct his former agency to calculate his lump sum annual leave payment based on the [GS-14, step 9] position that he held under a temporary promotion until the date of his retirement from the U.S. Army Space and Missile Defense Command in Huntsville, Alabama. The claimant states the agency regulation, requiring that an employee on temporary promotion be changed to lower grade and returned to his/her permanent position effective at least one day prior to the date of separation, conflicts with U.S. Office of Personnel Management (OPM) guidance, case law, and other agency regulations. He requests that he be paid the difference between the lump sum that he received calculated at GS-13, step 10, and GS-14, step 9. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate this claim.

While the claimant cites the Fair Labor Standards Act (FLSA) as the basis of his claim, he also cites Section 5551 of title 5, United States Code (U.S.C.) in support of his rationale. Claims under 5 U.S.C. 5551 are adjudicated under the provisions of 31 U.S.C. 3702. 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 and the FLSA filed under the provisions of 29 U.S.C. 204(f). However, OPM cannot take jurisdiction over the FLSA, 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 a position covered by a collective bargaining agreement between the American Federation of Government Employees, Local 1858 and the U.S. Army Space and Missile Defense Command. Because FLSA, 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 subject to during the claim period. Therefore, OPM has no jurisdiction to adjudicate the 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.