

Date: March 7, 2005
Claimant: [name]
File Number: 05-0007
OPM Contact: Robert D. Hendler

The claimant is employed as a [GS-13] with the Internal Revenue Service (IRS) in Austin, Texas. He requests that the U.S. Office of Personnel Management (OPM) direct his agency to restore his promotion to GS-13, Step 8, effective December 15, 2002, and restore the money that his agency recouped from him as the result of changing the promotion action from GS-13, Step 8, to GS-13, Step 7. Copies of documents that he submitted supporting his request include a settlement agreement signed by him, a representative of National Treasury Employees Union (NTEU), Chapter 72, and IRS management officials, stating that he would be promoted to GS-13, Step 1, retroactive to December 8, 1996, and a chronology of events emanating from that settlement. 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 Federal civilian positions under the provisions of 31 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, 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 NTEU, Local 72, and the IRS. 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 remains 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.