

Date: January 19, 2006

Claimant: [name]

File Number: 05-0013

OPM Contact: Robert D. Hendler

The claimant is employed in a Teacher, GS-1710-11, position with the Federal Bureau of Prisons, Metropolitan Detention Center, in [location]. He requests that the U.S. Office of Personnel Management (OPM) retroactively change the GS-9 grade level at which he was hired in 1996 to GS-11 based on his professional and academic credentials. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate this claim.

From his correspondence, it is unclear as to whether the claimant is requesting that the grade of his position be upgraded retroactively to 1996, or that he should have been appointed to a higher graded position in 1996 based on his credentials. Even though title 5, United States Code (U.S.C.), sections 5112 and 5346 (c) authorize OPM to decide position classification and job grading appeals, respectively, OPM's authority to adjudicate compensation and leave claims flows from a different law—31 U.S.C. 3702. The authority in § 3702 is narrow and limited to adjudications of compensation and leave claims. Section 3702 does not include any authority to decide position classification or job grading appeals. Therefore, OPM may not rely on 31 U.S.C. § 3702 as a jurisdictional basis for deciding position classification or job grading appeals and does not consider such appeals within the context of the claims adjudication function that it performs under § 3702. *Cf. Eldon D. Praiswater*, B-198758, December 1, 1980 (Comptroller General, formerly authorized to adjudicate compensation and leave claims under § 3702, did not have jurisdiction to consider alleged improper job grading); *Connon R. Odom*, B-196824, May 12, 1980 (Comptroller General did not have jurisdiction to consider alleged improper position classification). Furthermore, the Supreme Court in *United States v. Testan*, 424 U.S. 372 (1976), specifically held that neither the Classification Act, 5 U.S.C. §§ 5101 - 5115, nor the Back Pay Act, U.S.C. § 5596, creates a substantive right to back pay for periods of wrongful classification. B-190695, July 7, 1978 and B-191360, May 10, 1978.

The authority in § 3702 does not extend to and does not serve as a jurisdictional basis to review appointment actions accomplished under the authority of 5 U.S.C. § 3318. While controlling regulations require that appointees in the competitive service meet the qualification requirements of the position to which they are appointed, there is no requirement that applicants be appointed to the highest grade for which they are eligible. See 5 CFR 300, 332, and 338. Furthermore, in the absence of a showing of administrative error at the time the initial salary rate is fixed in the new grade or position, there is no authority to change such rate either retroactively or

prospectively. Administrative error is the failure of an agency to carry out written administrative policy of a nondiscretionary nature or to comply with administrative regulations having mandatory effect. Since applicants can be appointed at any grade for which they are qualified, administrative error does not attach to such decisions. B-173815, April 18, 1973.

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 (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 NGP. 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 CBAs be the exclusive administrative procedures for resolving matters covered by the agreements. *Accord, Paul D. Bills, et al.*, B-260475 (June 13, 1995); *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992).

Information provided by the agency at our request shows that the claimant is in a bargaining unit position. The fact that the claimant has not been a member of the bargaining unit since June 2004, as stated in his request, does not affect this fact. The claimant is covered by the CBA between the Council of Prison Locals, American Federation of Government Employees, and the Federal Bureau of Prisons. 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 subject to during the claim period. Therefore, OPM also has no jurisdiction to adjudicate any compensation claim potentially flowing from his request.

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.