

**Compensation Claim Decision**  
**Under section 3102 of title 31, United States Code**

**Claimant:** [name]

**Organization:** [agency component]  
Naval Base Ventura County Point Mugu  
Commander, Naval Region Southwest  
Department of the Navy  
Ventura, California

**Claim:** Back Pay for Incorrect Straight and  
Overtime Pay

**Agency decision:** Denied

**OPM decision:** Denied for Lack of Jurisdiction

**OPM contact:** Robert D. Hendler

**OPM file number:** 06-0036

/s/ for

---

Robert D. Hendler  
Classification and Pay Claims  
Program Manager  
Center for Merit System Accountability  
Human Capital Leadership  
and Merit System Accountability

6/26/2006

---

Date

The claimant is employed in a [position] in the [agency component]; Naval Base Ventura County Point Mugu; Commander, Naval Region Southwest; Department of the Navy; in Ventura, California. He requests the Office of Personnel Management (OPM) direct his agency to correct an “unsettled underpayment of salary and dispute in pay calculations.” He also asserts he has not received payment for suffer and permit overtime under the Fair Labor Standards Act (FLSA) and that his agency has failed to issue a Standard Form 50 (SF-50) documenting “the claimants [sic] mandatory 7&7 168 hour work schedule.” We received the claim on May 5, 2006, and information from the agency on June 8, 2006. For reasons discussed herein, the claim is denied.

OPM cannot take jurisdiction over the compensation, leave, or FLSA claims (FLSA claims are covered under title 5, Code of Federal Regulations (CFR) part 551 and not 5 CFR part 178 which covers compensation and leave claims) of Federal employees who 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. The Federal 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 (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.*, 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 was in and continues to occupy a bargaining unit position covered by a CBA between the National Association of Government Employees, Local R12-29, and the Naval Construction Battalion Center Port Hueneme, California, during the period of his claim. Because compensation, leave (and FLSA) 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 his compensation claim (or FLSA claim).

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