

Compensation Claim Decision
Under section 3702 of title 31, United States Code

Claimant: [name]

Organization: [agency component]
Red River Army Depot
Department of the Army
Texarkana, Texas

Claim: Pay setting

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 06-0037

/s/ for

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

9/3/2008

Date

The claimant currently occupies a [job] in the [agency component], Red River Army Depot, Department of the Army (DA), in Texarkana, Texas. He seeks assistance from the U.S. Office of Personnel Management (OPM) “to have 100-% pay raises re-instated for 2003 and 2004 and reimbursement for back pay due” to him. OPM received the request on May 17, 2006, and the agency administrative report on April 25, 2008. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

Part 178 of title 5, Code of Federal Regulations (CFR), concerns the adjudication and settlement of claims for compensation and leave performed by OPM under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). Section 178.102(a)(3) of 5 CFR requires an employing agency to have already reviewed and issued an initial decision on a claim before it is submitted to OPM for adjudication. DA’s claims settlement authority is vested in the DA’s Policy and Program Development Division, Office of the Deputy Chief of Staff, G-1. Based on the information submitted, we find no record of the claimant having filed a signed, written claim with his employing agency (DA) as required by statute and regulation (31 U.S.C. § 3702(b)(1) and 5 CFR § 178.102(a)) or having received a claim denial. Instead, we find signed correspondence between the claimant and his payroll provider, the Defense Finance and Accounting Service, which functions as payroll provider to DA, in which the claimant seeks a waiver of debt for salary overpayment. The claimant now seeks to challenge the underlying rationale of this determination of indebtedness. However, we may render a decision on this matter based on jurisdictional grounds.

OPM has authority to adjudicate compensation and leave claims for most Federal employees under the provisions of 31 U.S.C. § 3702(a)(2). However, OPM cannot take jurisdiction over the compensation or 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 the matter is or was specifically excluded from the agreement’s NGP. The Federal courts have found Congress intended such a grievance procedure 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 5 U.S.C. mandates grievance procedures in negotiated CBAs are to 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).

The claimant states he was not a bargaining unit member. However, the fact he occupied a bargaining unit position during the period of the claim is determinative. The CBA between Red River Army Depot and Local 2189, National Federation of Federal Employees in effect during the period of the claim does not specifically exclude compensation and leave issues from the NGP (Article XXX) covering the claimant. Therefore, the claimant’s pay setting request must be construed as covered by the NGP the claimant was subject to during the claim period. Accordingly, OPM has no jurisdiction to adjudicate the claimant’s compensation 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.