

The claimant is employed in a Management and Program Analyst, GS-343-11, position in the [agency component], U.S. Forest Service, U.S. Department of Agriculture, with a duty station of [city & State]. She disagrees with her agency's "Denial of My Overpayment waiver." In a January 23, 2008, letter to Senator Orrin G. Hatch, the claimant asked him to forward her appeal on this matter to the U.S. Office of Personnel Management (OPM). OPM received the claimant's waiver request on February 8, 2008, as an enclosure to a January 29, 2008, letter on this matter from Senator Hatch. For the reasons discussed herein, OPM does not have jurisdiction to consider this request.

It appears the claimant's request is based on unclear information provided in the agency's January 14, 2008, "Waiver Denial" which states:

Your request for Waiver of Overpayment for \$938.47 has been denied. Roy Roosevelt, Assistant Director, HR Operations, ASC/HCM, has denied your waiver request.

A claim denied by the ASC/HCM is final. You have the right to appeal the ASC/HCM decision to OPM only as regards to procedural issues (such as; [sic] arbitrary, capricious, or in error of the laws or regulations), there is no appeal of the agency decision to deny waver [sic] of overpayment.

Since the agency's January 14, 2008, letter's subject is "Waiver Denial" and does not indicate the claimant contested the conclusion she was overpaid, we must assume the claimant believed the agency's refusal to waive her indebtedness could be reviewed by OPM if she believed the agency's action was procedurally defective.

The provisions of 31 U.S.C. § 3702(a)(2) and its implementing regulations (part 178 of title 5, Code of Federal Regulations) are intended to provide recourse to challenge Federal agency decisions regarding entitlement to compensation. Contrary to the agency's characterization of this process as procedural, a claim settlement reflects the final Executive branch determination on the application of law and regulation with regard to the merits of a claim. However, the instant case does not involve a challenge to the determination the claimant received a salary overpayment since the claimant asserted she brought the fact she had been overpaid to the attention of her servicing human resources office.

As a result of legislative and executive action, the authority to waive overpayments of pay and allowances now resides with the heads of agencies, regardless of the amount. See the General Accounting Office Act of 1996, Pub. L. No. 104-316, 110 Stat. 3826, approved October 19, 1996; and the Office of Management and Budget (OMB) Determination Order dated December 17, 1996. Neither Pub. L. No 104-316 nor OMB's Determination Order of December 17, 1996, authorizes OPM to make or to review waiver determinations involving erroneous payments of pay or allowances. Therefore, OPM does not have jurisdiction to consider, or issue a decision on, the request for a waiver of a claimant's indebtedness to the United States, because the authority to waive the claimant's indebtedness is vested in her employing agency, the U.S. Department of Agriculture.

OPM has authority to adjudicate compensation and leave claims for most Federal employees under the provisions of section 3702(a)(2) of title 31, United States Code. 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 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, 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).

Information provided by the claimant's servicing human resources office at our request shows the claimant was in a bargaining unit position during the time period in which the overpayment arose and continues to occupy such a position. The CBA between the U.S. Department of Agriculture, Forest Service, and the Forest Service Council, National Federation of Federal Employees, IAM&AW, AFL-CIO, in effect at the time of the claimant's reassignment and still in effect, does not specifically exclude compensation and leave issues from the NGP (Article 9) covering the claimant. Therefore, compensation and leave issues must be construed as covered by the NGP the claimant was subject to during the claim period. Accordingly, the agency erred in advising the claimant to contact OPM since OPM would also have no jurisdiction to consider or render a decision on any disagreement between the claimant and the agency on compensation and leave matters.

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