

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

Claimant: [name]

Organization: [agency component]
U.S. Forest Service (FS)
U.S. Department of Agriculture (USDA)
[city & State]

Claim: Waiver of indebtedness for salary
overpayment

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 09-0003

//Judith A. Davis for

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

3/11/2009

Date

In her October 31, 2008, letter to the U.S. Office of Personnel Management (OPM) received on November 13, 2008, the President of [agency component]-Local [number], National Federation of Federal Employees (NFFE), seeks to appeal the claimant's debt. Specifically, claimant states:

We are appealing this debt as **arbitrary and capricious** without reasonable and adequate consideration of the circumstances and should be invalidated (sic) on the grounds that the employee presented a good faith effort to resolve this issue...and the failure of the agency to follow proper procedure and policy to correct in a **timely manner causing** (sic) a **harmful error**.

The President of NFFE Local [number] asks OPM to suspend debt collection proceedings until a fair and equitable resolution can be determined.

The claimant occupies what is described as an Administrative Assistant position in [agency component]. The subject of the claim request arose when the claimant was temporarily promoted not to exceed five years from Information Assistant, GS-1001-5, step 6, to a Financial Technician, GS-503-7, step 3, on January 24, 2008. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

Part 178, subpart A of title 5, Code of Federal Regulations (CFR), concerns the adjudication and settlement of Federal civilian employee claims for compensation and leave. Section 178.103 states that a claim filed by a claimant's representative must be supported by a duly executed power of attorney or other documentary evidence of the representative's right to act for the claimant. The claim request did not contain such documentary evidence. Because the requirements of 5 CFR 178.103 have not been met in this case, the President of NFFE Local [number] does not have standing to represent the claimant on this matter before OPM. However, based on the information submitted into the record, we may render a decision on this matter on jurisdictional grounds.

The record shows the President of NFFE Local [number] was advised by the Albuquerque Service Center, Human Capital Management, FS, USDA, on October 16, 2008, that her request for a waiver for salary overpayment on behalf of the claimant was partially approved in the amount of \$3,184.82. The waiver for the remainder of the overpayment in the amount of \$2,512.80 was denied. The agency advised:

A claim denial 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 waiver of the overpayment**.

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 the OPM to make or to review another agency's 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 claimant's

indebtedness to the United States or intervene in the subsequent salary offset as the President of NFFE Local 2195 requests.

In addition to seeking a waiver, the President of NFFE Local [number] appears to challenge the propriety of the underlying debt, a matter which is reviewable by OPM under the provisions of 31 U.S.C. § 3702(a)(2) for many Federal employees. The provisions of 31 U.S.C. § 3702(a)(2) are intended to provide recourse to challenge Federal agency decisions regarding entitlement to compensation. However, the instant case does not appear to challenge such a denial since it appears the technical propriety of the underlying debt is not at issue; all parties agree the claimant received a salary overpayment which resulted in her indebtedness. The characterization of this debt by the President of NFFE Local [number] as “arbitrary and capricious” and “harmful error” is misplaced. The length of time between the surfacing of the error and the agency’s action to resolve it and the financial hardship and emotional stress of the debtor do not form bases for challenging the propriety of an underlying debt to the United States.

In addition, OPM cannot take jurisdiction over the compensation and leave claims of Federal civilian 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. (Emphasis added). This is because the 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, United States Code (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 employing agency at our request shows the claimant was in and continues to occupy a bargaining unit position during the period of her claim. The CBA between NFFE and FS, in effect at the time of the claimant’s temporary promotion does not specifically exclude compensation and leave issues from the NGP (Article 9) covering the claimant. Therefore, the NGP the claimant was subject to during the period of the claim would be the sole and exclusive administrative remedy available to her to challenge the underlying debt of the instant salary overpayments. Accordingly, OPM does not have jurisdiction to adjudicate any compensation claim arising from this matter.

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.