

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

Claimant: [name]

Organization: [agency component]
National Guard Bureau
[city & State]

Claim: Correction of Service Computation
Date-Leave

Agency decision: Denied

OPM decision: Denied; Lack of jurisdiction

OPM file number: 08-0119

/s/ Judith A. Davis for
Robert D. Hendler
Classification and Pay Claims
Program Manager
Merit System Audit and Compliance

5/18/2010
Date

In her November 20, 2007, letter to the U.S. Office of Personnel Management (OPM), received on December 11, 2007, the claimant's representative (who provided a signed designation of representative to OPM on December 18, 2007) states the claimant was terminated from his Federal civil service employment less than 10 months prior to his being fully vested in the Federal Employees Retirement System (FERS). The claimant's representative seeks:

...to the extent possible: (1) that his service computation date be fixed on all federal documents; (2) that he be reemployed with the [State] National Guard; (3) that he get paid for his 1220 hours of annual leave he lost on account of the incorrect service date; and (4) that his benefits be restored.

For the reasons discussed herein, the claim is denied for lack of jurisdiction.

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* (emphasis added), unless the matter is or was *specifically* excluded from the CBA'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 title 5, United States Code (U.S.C.) mandates 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 claimant's former employing agency at our request shows the claimant was in a bargaining unit position covered by CBAs between the Adjutant General [of the State] and [chapter number], Association of Civilian Technicians during the period of this claim. Compensation and leave issues were not specifically excluded from the NGPs covering the claimant. For OPM purposes, the fact such matters were not specifically excluded from the NGP (Article 34 in both CBAs) is enough to remove this claim from OPM's jurisdiction. As is clear in *Muniz v. United States*, 972 F.2d 1304 (Fed. Cir. 1992), the fact the claimant is no longer employed by the [State] Air National Guard does not remove the Civil Service Reform Act's jurisdictional bar for claims covered by CBA arbitration and grievance procedures which arose during and from his employment with the [State] Air National Guard.

OPM's authority to adjudicate compensation and leave claims in 31 U.S.C. 3702 is narrow and limited to adjudications of compensation and leave claims. As discussed above, OPM does not have jurisdiction to adjudicate the claimant's compensation claim. As OPM advised in its January 11, 2008, letter to the claimant's representative, section 3702 does not include any authority to reverse terminations from Federal employment or review retirement service computation dates.

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.