

**U.S. Office of Personnel Management
Compensation Claim Decision
Under section 3702 of title 31, United States Code**

Claimant: [name]

Organization: [agency component]
Department of the Navy
[city & State]

Claim: Back pay for delayed promotion

Agency decision: Denied

OPM decision: Denied; Lack of jurisdiction

OPM file number: 10-0033

//Judith A. Davis for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Merit System Audit and Compliance

7/26/2011

Date

The claimant is employed as an Equipment Specialist (Airframe), GS-1670-11, with the [agency component, city & State]. The claimant requests that OPM require his employing agency to change the date of his promotion to GS-11 from March 25, 2010, to March 3, 2010, and asks for “the money due [him] from the period of 03/03/2010 to 03/25/2010.” The U.S. Office of Personnel Management (OPM) received the claim and additional information from [agency component] on May 13, 2010. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The claimant states he was hired as a GS-1670-9, step 1, on March 2, 2009, “with promotion to GS-11 on a one year anniversary of 03/03/2010,” but that his promotion “did not happen until 03/25/2010.” He states: “I received my LES for pay period ending 3/19/2010 on 3/13/2010. I was still listed as GS-1670-09. I immediately called HRO and spoke to a representative and asked what happened. I was told: “You must have fallen out of our tickler file.”” He states that he contacted the American Federation of Government Employees, Local [number], on March 13, 2010, and also contacted the [agency component] human resources office (HRO). The claimant states: “Several weeks passed before the HRO told the union rep, “It is not our policy to back date promotions and [the claimant] will have to file a pay complaint with OPM.” ”

OPM has authority to adjudicate compensation and leave claims for Federal employees under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). OPM’s adjudication authority is an administrative remedy, not a judicial remedy. *See* 5 CFR part 178. Section 7121(a)(1) of title 5, United States Code, directs that except as provided elsewhere in the statute, the grievance procedures in a negotiated collective bargaining agreement (CBA) shall be the exclusive administrative remedy for resolving matters that fall within the coverage of the CBA. The Court of Appeals for the Federal Circuit has found the plain language of 5 U.S.C. 7121(a)(1) to be clear, and as such, limits the administrative resolution of a Federal employee’s grievance to the negotiated procedures set forth in the CBA. *Mudge v. United States*, 308 F.3d 1220, 1228 (Fed. Cir. 2002). Further, the Federal Circuit also found that all matters not specifically excluded from the grievance process by the CBA fall within the coverage of the CBA. *Id. at 1231*. As such, OPM cannot assert jurisdiction over the compensation or leave claims of Federal employees who are or were subject to a negotiated grievance procedure (NGP) under a 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 CBA’s NGP. *See* 5 CFR 178.101(b).

The record shows the claimant occupies a bargaining unit position at [agency component]. The CBA between the [agency component, city & State] and the American Federation of Government Employees, Local [number], covering the claimant during his employment with [agency component] and in effect during the period of the claim, does not specifically exclude compensation issues from the NGP (Article 21). Therefore, the claimant’s compensation claim 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 or to intervene in 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.