

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

**Claimant:** [name]

**Organization:** [agency component]  
Internal Revenue Service  
U.S. Department of the Treasury  
[city & State]

**Claim:** Records review to ensure placement in correct career ladder and with the correct effective dates

**Agency decision:** N/A

**OPM decision:** Denied; lack of jurisdiction

**OPM decision number:** 11-0013

//Judith A. Davis for

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

12/19/2011

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Date

The claimant, who is employed by the Internal Revenue Service (IRS) as a Budget Analyst in a career ladder position, states “[s]ince August of 2008, I have protested the delay of my promotion to the GS-0559-09” and “I want my records reviewed to ensure I was placed in the correct career ladder and with the correct effective dates.” The claimant also states “I’ve calculated only based upon time in grade and I’ve missed out on promotions within the career ladder to a sum of \$12,686.” The U.S. Office of Personnel Management (OPM) received the claim request on January 24, 2011, and additional information from the IRS on January 31, 2011. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

OPM has authority to adjudicate compensation and leave claims for Federal employees under the provisions of section 3702(a)(2) of title 5, United States Code (U.S.C.). OPM’s adjudication authority is an administrative remedy, not a judicial remedy. *See* 5 Code of Federal Regulations (CFR) part 178. Section 7121(a)(1) of title 5, U.S.C., 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).

Information provided by the claimant shows he occupied a bargaining unit position while employed by IRS. The CBA between the IRS and the National Treasury Employees Union in effect during the period of the claim does not specifically exclude compensation issues from the NGP (Article 41) covering the claimant. Therefore, the claimant’s apparent request for back pay 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.<sup>1</sup>

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.

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<sup>1</sup> Although we may not render a decision on this claim, we note OPM’s authority under 5 U.S.C. § 3702 (a)(2) is narrow and limited to adjudication of compensation and leave claims. Section 3702 (a)(2) does not include the authority to review an agency’s qualification or eligibility for promotion determinations which the claimant seeks to challenge by the filing of this claim. These determinations would be necessary for OPM to render a decision on the merits of the claimant’s underlying compensation claim. Accordingly, OPM would also lack subject-matter jurisdiction to adjudicate the claimant’s delayed promotion claim.