

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

Claimant: [name]

Organization: U.S. Missile Command
Department of the Army
[installation & State]

Claim: Interest on Continuation of
Pay

Agency decision: N/A

OPM decision: Denied; lack of jurisdiction

OPM file number: 12-0005

//Judith A. Davis for

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

5/8/2012

Date

The claimant, formerly employed in a GS-13 Electronics Engineer position with the U.S. Missile Command (now known as the U.S. Army Aviation and Missile Command), Department of the Army (DA), at [installation] seeks interest on retroactive continuation of pay (COP) authorized by the U.S. Department of Labor (DoL) on April 13, 2011. OPM received the claim on November 15, 2011, and information from the former employing activity on January 24, 2012. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

On June 19, 1995, the claimant suffered an injury on the job and never returned to work. The agency subsequently granted her a total of fifteen days of continuation of pay (COP). The claimant now seeks interest on the retroactive COP payment under section 5596 of title 5, United States Code (U.S.C.), which covers back pay for unjustified personnel action. She bases her request on the Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation, Form CA-1, which she submitted to her agency "on or around June 26, 1995."

The claimant provided a copy of a letter from DoL, dated April 13, 2011, File Number: 06062852, which states in pertinent part:

We have evaluated the evidence submitted in support of your request for review. Your case has been reviewed on its merits under Title 5, United States Code, Section 8128, in relation to your application including supporting evidence. It is determined that you have provided sufficient evidence to establish your entitlement to Continuation of Pay...

The claimant acknowledges she was "covered by a bargaining unit at the time but OWCP [DoL's Office of Workers' Compensation Programs] pay issues are excluded." She now seeks a decision from OPM granting interest on the COP authorized by DoL.

Section 7121(a)(1) of 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 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's former employing activity at our request includes the CBA between the U.S. Army Missile Command and American Federation of Government Employees (AFGE), Local [number], covering the claimant and in effect during the period of the claim. The claimant's assertion that OWCP pay issues are excluded is based on a copy of a September 8, 2011, letter from an AFGE Local [number] official which states: "This is to advise you that I do little or no OWCP work. Nor is there anyone within AFGE Local [number] that does this work at this time." Contrary to the claimant's assertion regarding OWCP coverage,

this letter merely states AFGE Local [number] lacks expertise on OWCP matters. Furthermore, the CBA does not specifically exclude compensation issues from the NGP (Article 10) covering the claimant. Therefore, the claimant's request for interest on her COP payment based on the provisions of 5 U.S.C. § 5596 must be construed as covered by the NGP the claimant was subject to during the period in which the claim arose. Accordingly, OPM lacks jurisdiction to adjudicate this claim. As is clear in *Muniz v. United States*, 972 F.2d 1304 (Fed. Cir. 1992), the fact that the claimant is no longer employed by the U.S. Missile Command does not remove the Civil Service Reform Act's jurisdictional bar for claims covered by the CBA arbitration and grievance procedures that arose during and from her employment with the U.S. Army Missile Command.

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