

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

**Claimant:** [name]

**Organization:** [agency component]  
Veterans Affairs Medical Center  
Department of Veterans Affairs  
[city & State]

**Claim:** Back pay due to an erroneous  
personnel action

**Agency decision:** N/A

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

**OPM file number:** 12-0011

//Judith A. Davis for

---

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

3/14/2012

---

Date

The claimant, employed in a Civilian Pay Technician position at the Veterans Affairs Medical Center (VAMC) in [city & State], seeks back pay plus interest for the period August 31, 1997, through January 8, 2005, because she believes the agency incorrectly set her pay upon her August 31, 1997, promotion at GS-5, step 3, instead of GS-5, step 5. The U.S. Office of Personnel Management (OPM) received the claim on January 30, 2012, and information from the employing agency on February 9, 2012. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The claimant submitted a copy of a November 18, 2011, memorandum to the claimant from the VAMC Acting Associate Director stating “legal rulings (5 C.F.R. § 550.804(e)(2) and Mary J. Kampe and Martha R. Johnson, B-214245, July 23, 1984) prevent any back pay to you at this time.” This memorandum appears to have been issued in response to the claimant’s September 30, 2011, letter to the VAMC Director stating she had brought the aforementioned pay setting issue to the attention of the VAMC Human Resources Office “verbally in October 2010 and via e-mail on 11/15/2010” and was subsequently advised by a VAMC Human Resources staff member:

that they would make all the necessary corrections to my salary record; however, due to the “Statutes [sic] of Limitations” they are only authorized to go back six years from the date of the request to pay me the difference in pay. I am completely outraged by this and cannot understand why I am being penalized and punished for an error that was no fault of my own.

\* \* \* \* \*

I have researched federal Statute of Limitations, namely the Barring Act, which states that claims against the United States “must be received by the Comptroller General within six years after the claim accrues.” However, the Back Pay Act states it does NOT limit the retroactivity of the back pay award. The Federal Labor Relations Authority (FLRA) continued by stating that: “We have consistently held the Barring Act applies only to claims brought before the Comptroller General and there is no requirement for arbitrators to apply the Barring Act in fashioning awards of back pay under the Back Pay Act.”

Section 7121(a)(1) of 5 United States Code (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.

Information provided by the claimant's employing agency at our request shows the claimant occupied a bargaining unit position during the period of the claim. The CBA between the Department of Veterans Affairs and the American Federation of Government Employees, National Veterans Affairs Council of Locals, in effect during the period of the claim does not specifically exclude compensation and leave issues from the NGP (Article 43) covering the claimant. Therefore, the claimant's pay setting dispute 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 pay setting claim.

Although we may not render a decision on this claim, the claimant errs in her statement that the Back Pay Act does not limit the retroactivity of back pay awards. Under 5 U.S.C. § 5596(b)(4), the pay, allowances and differentials for an unjustified or unwarranted personnel action:

shall not exceed that authorized by the applicable law, rule, regulations or collective bargaining agreement...except that in no case may pay, allowances, or differentials be granted under this section for a period beginning more than 6 years before the filing of a timely appeal or, absent such filing, the date of the administrative determination.

This limitation is replicated in 5 CFR 550.804(e)(2) which states:

An agency may not authorize pay, allowances and differentials under this subpart in any case for a period beginning more than 6 years before the date of the filing of a timely appeal, or, absent such filing, the date of the administrative determination that the employee is entitled to back pay....

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.