

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

**Claimant:** [name]

**Organization:** [organizational component]  
U.S. Army Installation Management  
Command  
[installation & State]

**Claim:** Salary adjustment and back pay

**Agency decision:** N/A

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

**OPM file number:** 12-0025

//Judith A. Davis for

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

8/22/2012

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Date

The claimant is currently employed as an Air Traffic Control Specialist (Terminal), GS-2152-11, at [installation & State]. He requests a within-grade increase (WGI) and back pay from February 14, 2010, to the present. The U.S. Office of Personnel Management (OPM) received the claim request on March 16, 2012, and additional information from the claimant's employing agency on May 4, 2012. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

In a tentative job offer dated December 1, 2009, the claimant was offered and accepted a position as an Air Traffic Control Specialist (Terminal) at [installation]. The tentative salary offer was \$70,846.00 per annum. This salary offer was obtained using Special Salary Rate Table Number 0565, effective date January 1, 2009. The claimant states he received "a firm job offer" on January 4, 2010, showing the same salary offer and a starting date of February 16, 2010. Upon receiving his first Leave and Earnings statement and Notification of Personnel Action (SF-50) from [installation], the claimant noticed his total salary had not been increased and remained at \$69,144.00. This salary was obtained using Special Salary Rate Table Number 0566, effective date January 1, 2010. The claimant subsequently contacted his Civilian Personnel Advisory Center (CPAC) and was told additional information had been received a week after the offer was extended and they thought they had mentioned the salary difference in a phone conversation; i.e., the initial salary offer was erroneously made from Special Salary Rate Table 0565 rather than Special Salary Rate Table 0566. The claimant now seeks a within-grade increase that would "bring him inline...with what he was offered" and back pay with interest.

OPM has authority to adjudicate compensation and leave claims for many 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, 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 at [installation]. The CBA between the U.S. Army Garrison-[installation] and the American Federation of Government Employees (AFGE), Local [number], in effect during the period of the claim does not specifically exclude compensation issues from the NGP (Article 52) covering the claimant. Therefore, the claimant's request for a within-grade increase and 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.

Although we may not render a decision on this claim, we note it is well settled by the courts that a claim may not be granted based on misinformation provided by agency officials. Payments of money from the Federal Treasury are limited to those authorized by statute, and erroneous advice or information provided by a Government employee cannot bar the Government from denying benefits which are not otherwise permitted by law. *See Office of Personnel Management v. Richmond*, 496 U.S. 414, *rehearing denied*, 497 U.S. 1046, 111 S. Ct. 5 (1990); *Falso v. OPM*, 116 F.3d 459 (Fed.Cir. 1997); and 60 Comp. Gen. 417 (1981). Therefore, the claimant may not rely on the agency's erroneous salary offer from an incorrect pay table to support his claim since the offer was contrary to controlling regulation.

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.