

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

Claimant: [name]

Organization: U.S. Department of Veterans Affairs

Claim: Sunday premium pay; paysetting

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 14-0004

/s/ Linda Kazinetz for _____

Robert D. Hendler

Classification and Pay Claims

Program Manager

Agency Compliance and Evaluation

Merit System Accountability and Compliance

1/30/14 _____

Date

The claimant was formerly employed with the Department of Veterans Affairs (VA). He requests Sunday premium pay for hours worked after May 26, 2009, for which he has filed a claim with his agency but has not received a final decision, and asks that we "investigate this situation and get me paid for the hours I worked." He also asserts his grade and steps were set incorrectly in connection with his September 13, 2009, reassignment from a WG-2, step 2, position at the Veterans Affairs Medical Center (VAMC) in West Palm Beach, Florida, to a WG-1, step 1, position at the VA Upstate New York Health Care Service (HCS) in Batavia, N.Y., and his subsequent June 6, 2010, reassignment to a WG-1, step 1, position with the HCS in Buffalo, N.Y. He states that although "the job reassignments were voluntary, the reduction in grade and steps were not and did not follow the guidelines of Federal Wage Operating Manual and VA Handbook 5007," and that although he "left Federal service at WG2 Step 3 [he] should have been WG2 Step 5." We received the claim on November 14, 2013. For the reasons discussed herein, the claim is denied.

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.). However, section 178.102(a) of title 5, Code of Federal Regulations (CFR), indicates that the claimant's employing agency must review and issue a written decision on a compensation claim before it is submitted to OPM for adjudication. The claimant is responsible for preserving the claim period by proving the signed, written claim was filed within the applicable statute of limitations. *See* 5 CFR 178.104. The information provided by the claimant with his request does not show he has filed a signed, written claim with the VA component authorized to issue an agency-level decision or that he has received such a decision. Nevertheless, we may render a decision on this claim in its entirety based on lack of jurisdiction.

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, leave, or FLSA 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 (i.e., Standard Form 50s showing the bargaining unit status in block 37) shows that he occupied bargaining unit positions during the period covered by the paysetting claim. The Master Agreement between the Department of Veterans Affairs and the American Federation of Government Employees (which covered the claimant during his employment at the HCS Batavia), and the Agreement between the VA Western New York Healthcare System Buffalo Division and the Service Employees International Union (which covered the claimant during his employment at the HCS Buffalo), and in effect during the claim

period, do not specifically exclude compensation issues from the NGPs (Articles 42 and 15, respectively). Therefore, this claim must be construed as covered by the NGPs the claimant was subject to during the claim period and OPM has no jurisdiction to adjudicate this claim.

In regard to the request for Sunday premium pay, the claimant had submitted a claim to the HCS Buffalo which was initially denied because, as they stated in a July 25, 2012, letter to him, "[y]ou did not work any part-time Sunday hours during your claim period." However, in a subsequent August 1, 2012, letter, the HCS Buffalo stated: "You were notified previously that a final decision on your claim had been made. We have received your original claim and we have reconsidered our decision based on the evidence you have given. It is expected that a final decision on your claim will be made within the next 90 days, at which time you will receive written notification." The claimant asserts in his claim request to OPM that "[a] recent phone call to Buffalo HR revealed that the payments are still not being processed and no one is assigned to perform this task." The claimant submitted no documentation of the hours he worked for which pay may be due, but rather requests that OPM intervene on his behalf with the HCS Buffalo to secure payment.

Although the claimant did not provide an SF-50 for the portion of the claim period he was employed at the VAMC West Palm Beach, Florida, from May 26, 2009, until September 13, 2009, we note that OPM's claim adjudication authority under 31 U.S.C. § 3702(a)(2) is limited to deciding if the governing statutes and regulations have been properly interpreted and applied in determining the pay and/or benefits to which an employee is entitled. The burden is upon the claimant to establish the liability of the United States and the claimant's right to payment. *See* 5 CFR 178.105. OPM does not perform investigations of agency operations, or intervene in such operations at the request of individual employees, as the claimant requests in connection with the Sunday premium pay issue. Therefore, we deny the claimant's request that we investigate the agency's operations in connection with his claim for Sunday premium pay which he believes is pending with the agency and will not address this request further. We also note that if the claimant should withdraw his claim to the HCS Buffalo and submit it to OPM for adjudication, he would be subject to the same provisions discussed above in connection with the paysetting claim if he occupied a bargaining unit position during this period and the matter was not specifically excluded from the corresponding CBA's NGP. As is clear in *Muniz v. United States*, 972 F.2d 1304 (Fed. Cir. 1992), the fact the claimant is no longer employed by the VAMC West Palm Beach does not remove the Civil Service Reform Act's jurisdictional bar for claims covered by CBA arbitration and grievance procedures which arose during and from his employment with that VAMC.

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.