

Date: January 30, 2006

Claimant: [name]

File Number: 03-0030

OPM Contact: Robert D. Hendler

The claimant is employed as a [position] with the Ogden Air Logistics Command at Hill Air Force Base (AFB), Utah. He requests that the U.S. Office of Personnel Management (OPM) direct his agency to compensate him with hazard pay from July 16, 2001, until March 1, 2002. A May 12, 2004, letter from OPM to the claimant seeking additional information erroneously identified the claim number as number 04-F004. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate this claim.

OPM is responsible for reviewing and adjudicating all claims related to compensation and leave for Federal civilian positions under the provisions of section 3702 of title 31, United States Code. However, OPM cannot take jurisdiction over the compensation or leave claims of Federal employees *that are or were subject* to a negotiated grievance procedure (NGP) under a collective bargaining agreement (CBA) between the employee's agency and labor union for any time during the claim period, unless that matter is or was specifically excluded from the agreement's NGP. (Emphasis added). The Federal courts have found that Congress intended that such a grievance procedure is to be the exclusive administrative remedy for matters not excluded from the grievance process. *Carter v. Gibbs*, 909 F.2d 1452, 1454-55 (Fed. Cir. 1990) (en banc), *cert. denied*, *Carter v. Goldberg*, 498 U.S. 811 (1990); *Mudge v. United States*, 308 F.3d 1220 (Fed. Cir. 2002). Section 7121(a)(1) of title 5, United States Code, mandates that the grievance procedures in negotiated CBAs be the exclusive administrative procedures for resolving matters covered by the agreements. *Accord, Paul D. Bills, et al.*, B260475 (June 13, 1995); *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992).

During the claim period, the claimant occupied, and continues to occupy, a position covered by a CBA between the American Federation of Government Employees (AFGE) Council 214 and the Air Force Materiel Command, and the Local Supplement Agreement between AFGE Local 1592 and the Ogden Air Logistics Center. Article 26, Hazard and Environmental Pay, in the Local Supplement Agreement states that claims on such matters are specifically covered by the grievance process provided for in Article 6 (Negotiated Grievance Procedure and Alternate Dispute Resolution). Because hazard pay issues are not excluded from, but are specifically covered by the NGP, OPM has no jurisdiction to adjudicate the claim.

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.