

Compensation Claim Decision
Under section 3702 of title 31, United States Code

Claimant: [name]

Organization: [agency component]
Employment Standards Administration
U.S. Department of Labor
[city & State]

Claim: Compensation for Retroactive
Promotion Due to Administrative Error

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 07-0026

/s/ for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability

5/24/2007

Date

The claimant, currently employed in a Wage and Hour Compliance Specialist, GS-249-12, position with the [agency component], Employment Standards Administration, U.S. Department of Labor, in [city & State], requests to be retroactively promoted based “on the ground [sic] of administrative error.” The basis of her claim is while her promotion from GS-11 to GS-12 was approved effective September 3, 2006, she did not receive the correct salary for her promotion for pay periods #18 through #20. The Office of Personnel Management (OPM) received the claim request on February 12, 2007, and information from the agency on May 9, 2007. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The claimant states she made her servicing human resources office (HRO) aware of her not receiving proper pay. She states after failing to receive responses to e-mails “requesting an answer to my claim” she “interpreted his [HRO contact] lack of response to my communications as a denial to my claim.”

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 the matter is or was specifically excluded from the CBA’s NGP. This is because the courts have found Congress intended 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 (U.S.C.) 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.*, B-260475 (June 13, 1995); *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992).

Block 37 of the Notification of Personnel Action provided by the claimant shows she is in a bargaining unit position. Because Section D of the NGP in the CBA between the U.S. Department of Labor and the National Council of Field Labor Locals AFGE, AFL-CIO, does not specifically exclude compensation issues from the NGP covering the claimant at the time her claim arose, they must be construed as covered by the NGP the claimant was subject to during the claim period. We note the current CBA, effective October 1, 2006, also does not exclude compensation issues from the scope of the NGP. Therefore, OPM also has no jurisdiction to adjudicate any compensation claim potentially flowing from her request.

Although we have no jurisdiction to consider this claim, we note the claimant failed to provide the documentation required to file a claim with OPM. Part 178 of title 5, Code of Federal Regulations (CFR) concerns the adjudication and settlement of claims for compensation and leave. Section 178.102 describes the procedures for submitting claims as well as the documentation that should accompany a claim. Paragraph (a)(3) of 5 CFR § 178.102 states that the claim should include a copy of the agency denial, supporting OPM’s position that the employing agency already has reviewed and issued a claim denial before the claim may be submitted to OPM for adjudication addressing the technical merits of the claim. The lack of response to e-mails is not a claim denial as asserted by the claimant.

Claims must be in writing and must contain the signature and address of the claimant or an authorized agent or attorney. 31 U.S.C. § 3702(b)(1); 5 CFR 178.102(a); 69 Comp. Gen. 455 (1990); 18 Comp. Gen. 84, 89 (1938). The purpose of the signature requirement is to “fix responsibility for the claim and the representations made therein.” *Bialowas v. United States*, 443 F.2d 1047, 1050 (3d Cir. 1971). Based on the information submitted by the claimant, we find no record she has ever submitted a signed claim to her employing agency.

We also note the claimant has misidentified the basis of her claim. There is no dispute her promotion to the GS-12 grade level became effective September 3, 2006. Therefore, there is no promotion which could be retroactively processed. This case is, at its core, a payroll processing dispute.

This OPM settlement of the claim 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.