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

Claimant: [name]

Organization: [agency component]
U.S. Department of Veterans Affairs
(VA)
[city & State]

Claim: Reasonable remedy for violation of
Family and Medical Leave Act (FMLA)

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 10-0021

//Judith A. Davis for

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

4/15/10

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Date

The claimant, employed in a Program Specialist, GS-301-11, position in the [agency component], VA, in [city & State], requests the U.S. Office of Personnel Management (OPM) (1) clarify whether he is eligible under FMLA to care for his newborn son, and (2) if he is eligible, force the [agency component] Human Resources Department (HRD) to acknowledge in writing that they "interfered with, restricted and denied" the claimant his FMLA rights. The claimant states he is "willing to consider any reasonable remedy that OPM believes would be appropriate in this situation." OPM received the claim request on February 16, 2010, and additional information from the claimant on February 22, 2010. For the reasons discussed herein, the claim is denied.

The claimant states that on July 24, 2009, he notified the [agency component] HRD his wife was due to give birth during the third week of September. He states that four days later the HRD provided a sample memo request and a copy of the Certification of Health Care Provider form that needed to be completed by his wife's physician. The claimant states he took two weeks of annual leave (September 23 through October 2, 2009) subsequent to his son's birth on September 22, 2009, to care for his wife and son. He states that on November 10, 2009, he submitted a completed Certification of Health Care Provider to the HRD and planned for FMLA leave without pay to care for his newborn son to begin no sooner than December 14, 2009, after his wife returned to work. The claimant states that on December 2, 2009, he received an email from the HRD returning his request without action because it did not meet the criteria for FMLA and "far exceeded the timeframes for making the request." In his claim request, the claimant also describes the subsequent actions he took to ascertain why his activity found him ineligible for FMLA, culminating in his receipt of a January 20, 2010, email from the head of the HRD stating "FMLA is not for bonding" and "you would need to provide updated medical documentation to corroborate the need for FMLA in order to care for the child." The claimant states that "[a]t no time did [he] request FMLA to "bond" with [his] son" and provides additional reasons as to why the activity has failed to meet its FMLA obligations.

Although OPM has the authority to adjudicate leave claims for many Federal employees, OPM cannot take jurisdiction over 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 organization for any time during the claim period, unless that matter is or was specifically excluded from the agreement's NGP. The Federal courts have found Congress intended such a grievance procedure to be the exclusive administrative remedy for matters not excluded from the grievance process. *Carter v. Gibbs*, 909 F.2d 1452 (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 5 U.S.C. mandates 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).

The CBA between VA 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 leave issues from the NGP (Article 42) covering the claimant. Therefore, the claimant's FMLA claim must be construed as covered by the NGP the claimant was subject to during the claim period and OPM has no jurisdiction to adjudicate this claim.

Although we do not have jurisdiction to settle this claim, we note the activity appears to have misinterpreted several provisions of FMLA. The Family and Medical Leave Act entitlement, as the name of the statute suggests, provides for both family leave and medical leave. The medical certification stipulated in 5 U.S.C. § 6383 is limited to requests for medical leave under 5 U.S.C. § 6382(a)(1)(C) and (D); i.e., "[i]n order to care for the spouse, or son, or daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition" or "[b]ecause of a serious health condition that makes the employee unable to perform the functions of the employee's position." Contrary to the activity's apparent interpretation of FMLA, requests for leave under 5 U.S.C. § 6382(a)(1)(A) and (B) are not to deal with medical conditions and do not require medical certification. These portions of the statute provide 12 administrative workweeks of FMLA leave for "family" purposes, including but not limited to bonding with an employee's natural, foster or adopted son or daughter during the 12 months following the birth or placement of the child. Although the activity appears to have erred in its administration of FMLA in this case, we note FMLA as codified in Subchapter V of Chapter 63 of 5 U.S.C. does not provide a make-whole remedy for employees who have not been afforded their FMLA rights.

OPM's authority under 31 U.S.C. § 3702 for claims under its jurisdiction is narrow and restricted to adjudicating compensation and leave claims. This authority does not extend to ordering agencies to take disciplinary or performance-based action against agency employees who may have violated FMLA.

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.