

Date: January 12, 2006

Claimant: [name]

File Number: 05-0012

OPM Contact: Robert D. Hendler

The claimant was employed in a [position] with the U.S. Army Corps of Engineers, Savannah District, in Savannah, Georgia at the time of his claims. He requests that the U.S. Office of Personnel Management (OPM) restore annual leave taken by his agency for when he was absent without leave. He also requests overtime for travel to his overseas assignment. 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 civilian positions under the provisions of 31 U.S.C. 3702. 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 (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.*, B260475 (June 13, 1995); *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992).

During the claim period, the claimant occupied a position covered by a collective bargaining agreement between the American Federation of Government Employees, Local 2176, and the Savannah District. Because compensation and leave issues are not specifically excluded from the NGP covering the claimant, they must be construed as covered by the NGP that the claimant was subject to during the claim period. Therefore, OPM has no jurisdiction to adjudicate the compensation and leave claim.

This settlement is final. No further administrative review is available within the OPM. Nothing in this settlement limits the claimant's right to bring an action to the appropriate United States Court.