

Date: April 11, 2006  
Claimant: [name]  
File Number: 05-0014  
OPM Contact: Robert D. Hendler

The claimant occupies a [position] with Department of the Interior (DOI), Office of Surface Mining Reclamation and Enforcement (OSMRE), [agency component], in [city & State]. In his initial letter undated letter, which he states he mailed on February 14, 2005, the claimant requests the Office of Personnel Management (OPM) direct his agency to reimburse him for \$7,406.00 in lawyer's fees. We received the agency's administrative report on July 19, 2005. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The claimant states that he was informed of the agency's August 29, 2002, denial of attorney fees through his receipt of an October 14, 2004, letter from his attorney. The claimant asked for reconsideration of that decision in a November 22, 2004, letter to the [agency component] Regional Director, and provided a copy of that letter and the December 6, 2004, denial of his request. The claimant also provided a copy of his attorney's July 23, 2002, request to DOI for attorney's fees regarding a grievance identified as Docket No. PG 2001-11. However, the copy of the recommended grievance decision and cover letter, both of January 31, 2002, refer to a grievance under Docket No. PG 2000-17, and not PG 2000-11.

The agency administrative report states that on September 29, 2000, the claimant was suspended for four days for inappropriate remarks. Prior to that, on October 25, 1999, he received an official reprimand for discourteous behavior which was later replaced by a letter of warning. The claimant's attorney filed an initial request for attorney fees on April 25, 2001, which was denied on August 29, 2002. In its report, the agency asserted:

In order to obtain attorney fees, a Grievant must demonstrate, as required by 5 U.S.C. Section 5596 and 5 CFR 550.807, that: (1) there was an unjustified or unwarranted or unwarranted personnel action which results in a loss of pay; (2) he or she is the prevailing party; (3) the award of attorney fees is in the interest of justice; and (4) the attorney fees are reasonable. After a thorough review by...[the] Chief Personnel Appeals

Examiner, Office of Hearings and Appeals, United States Department of the Interior, concluded that claimant did not demonstrate the factors cited above and therefore payment of attorney fees was not warranted in either of the grievances. As stated in our August 29, 2002, letter to the claimant's attorney in response to his July 23, 2002, request for review of the grievance decision, "The Office of Hearings and Appeals carefully and fully considered the issue of attorney fees and recommended that they be denied. The Office of Surface Mining accepted this recommendation. There is no further right of review under the administrative grievance procedure."

The claimant would ask us to assume jurisdiction over the awarding of attorney fees under 5 U.S.C. § 5596(b)(1)(a)(ii) and 5 CFR 550.807(a)-(h). The agency's rationale responds to the merits of the request as described above, but does not address whether OPM has jurisdiction over this matter as the "appropriate authority" defined in under 5 U.S.C. § 5596(b)(1), and in 5 CFR 550.803 and 807(a).

While OPM is an entity having the authority to act as an "appropriate authority" (see 5 CFR 550.803 definition of "*Appropriate authority*"), it is not in the "case at hand." The authority in §3702(a)(2) is narrow and limited to adjudication of compensation and leave claims. Section 3702 does not include any authority to review disciplinary actions subject to agency administrative grievance procedures. In the instant case, the "appropriate authority" is the claimant's agency (see 5 CFR 550.803 definition of "*Appropriate authority*" (j)). Therefore, we adopt the same reasoning as articulated in 61 Comp. Gen. 290 ("Our office did not assume the role of an 'appropriate authority' in reviewing Ms. Hatler's downgrading, so that no request for attorneys fees may be considered by our office in this case."). Accordingly, the claim is denied for lack of jurisdiction.

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 in an appropriate United States Court.