

Date: January 31, 2006
Claimant: [name]
File Number: 06-0004
OPM Contact: Robert D. Hendler

The claimant is employed in a [position] at the Veterans Affairs Medical Center in West Palm Beach, Florida. He has been employed by the U.S. Department of Veterans Affairs since February 2, 1995. The claimant requests that the U.S. Office of Personnel Management (OPM) direct his agency to restore more than 1300 hours of sick leave that he accumulated when he worked for the U.S. Department of the Army from July 1, 1963, to April 5, 1985. 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 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, 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) and the U.S. Department of Veterans Affairs. The 1982 and current 1997 Master Agreement NGPs do not address leave issues. For OPM purposes, that such matters are not specifically excluded from the NGPs is enough to remove this claim from OPM jurisdiction.

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.