

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

Claimant: [name]

Organization: [agency component]
Department of the Air Force
[city & State]

Claim: Pay setting upon return from
Overseas appointment

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 08-0111

//Judith A. Davis for

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

2/6/2009

Date

The claimant occupies a [position] in the [agency component], Department of the Air Force (AF), at [city & State]. He seeks to file a compensation claim regarding the setting of his pay upon his placement in his [position] upon his return to the United States from the National Security Personnel System, [YF-02 position] he occupied at Kadena Air Base in Okinawa, Japan. The U.S. Office of Personnel Management (OPM) received the claim on June 23, 2008, and the agency administrative report (AAR) on November 17, 2008. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

OPM has authority to adjudicate compensation and leave claims for most Federal employees under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). However, OPM cannot take jurisdiction over the compensation or leave claims of Federal employees who 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. 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, 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 5 U.S.C. mandates grievance procedures in negotiated CBAs are to 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).

Information provided by the claimant's headquarters human resources office at our request shows the claimant was in a bargaining unit position during the period of his claim. The CBA between the [agency component] and the American Federation of Government Employees, Local [number] in effect at the time of the claim does not specifically exclude compensation issues from the NGP (Article 6) covering the claimant. Therefore, the claimant's paysetting claim must be construed as covered by the NGPs the claimant was subject to during the claim period. Accordingly, OPM has no jurisdiction to adjudicate the claimant's paysetting claim.

Although we have no jurisdiction to settle this claim, we note the AAR states: "It is the Air Force position that the claim be allowed." If this constitutes AF's final administrative determination on this matter, AF has the authority to make the claimant whole under 5 U.S.C. 5596(b)(4).

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.