

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

Claimant: [name]

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

Claim: Restoration of 176 hours of annual
leave and expenses incurred while on
enforced leave

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 10-0035

//Judith A. Davis for

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

10/7/2010

Date

The claimant, employed in a Materials Examiner and Identifier, WG-6912, position in [agency component], Department of the Navy (Navy), in [city & State], seeks “the return of 176 hours of annual/restored leave [he] was forced to use after being medically released to return to work.” If his request is approved, the claimant states he “would like to file a separate claim for return of expenses incurred as a result of being placed on enforced leave.” The U.S. Office of Personnel Management (OPM) received his claim on May 8, 2010, and additional information from the Navy on May 27, 2010. In a June 30, 2010, email to OPM, the claimant requested the number of hours to be restored be changed from 176 to 180. For the reasons discussed herein, the claim is denied.

Although OPM has the authority to adjudicate leave claims for many Federal employees, OPM cannot take jurisdiction over compensation 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. 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 claimant states he is not a union member and asserts:

the Negotiated Agreement that includes [agency component] states that nothing in the Agreement will affect the authority of the Employer to layoff, suspend, remove, or take disciplinary action against the employees. Placing an employee on Forced Leave for more than (14) days is a constructive suspension.

The record shows the claimant is in a bargaining unit position covered by a CBA in effect during the period of the claim. Parties to the CBA include [agency component] and the American Federation of Government Employees, Local [number]. The CBA’s NGP (Article 32) does not specifically exclude leave issues covering the claimant. Therefore, the claimant’s leave 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.¹

Although we may not render a decision on this claim, we note the authority in section 31 U.S.C. § 3702 is narrow and limited to adjudications of compensation and leave claims. Section 3702 does not include any authority to decide on the propriety of a constructive suspension for more than 14 days. Under 5 U.S.C. §§ 7512((2) and 7513(d), an employee suspended for more than 14 days is entitled to appeal to the Merit Systems Protection Board (MSPB) as provided for in 5

¹Neither the claimant’s union membership status nor the CBA section cited by the claimant affect this jurisdictional determination.

U.S.C. § 7701. Therefore, OPM does not consider such appeals within the context of the claims adjudication function it performs under section 31 U.S.C. § 3702.

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.