

**U.S. Office of Personnel Management
Compensation Claim Decision
Under section 3702 of title 31, United States Code**

Claimant: [name]

Organization: U.S. Department of Veterans Affairs
Augusta, Georgia

Claim: Back pay for working outside of
position description

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 14-0032

/s/ Chris Hammond for _____

Robert D. Hendler

Classification and Pay Claims

Program Manager

Agency Compliance and Evaluation

Merit System Accountability and Compliance

6/4/14 _____

Date

The claimant asserts she was “appraised as a GS-6, but paid on a GS-5 pay level” and is “requesting back pay for working out of [her] Position Description and being treated, unfair labor [sic].” We received the claim on March 27, 2014. For the reasons discussed herein, the claim is denied.

OPM settles Federal civilian employee compensation and leave claims under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.), and part 178 of title 5, Code of Federal Regulations (CFR). Section 178.102(a) of 5 CFR indicates that the claimant’s employing agency must review and issue a written decision on a compensation claim before it is submitted to OPM for adjudication. The claimant is responsible for preserving the claim period by proving the signed, written claim was filed within the applicable statute of limitations. *See* 5 CFR 178.104. The information provided by the claimant with her request does not show she has filed a signed, written claim with the agency component authorized to issue an agency-level decision or that she has received such a decision. Nevertheless, we may render a decision on her claim based on lack of jurisdiction.

Section 7121(a)(1) of title 5, U. S. C., directs that except as provided elsewhere in the statute, the grievance procedures in a negotiated collective bargaining agreement (CBA) shall be the exclusive administrative remedy for resolving matters that fall within the coverage of the CBA. The Court of Appeals for the Federal Circuit has found the plain language of 5 U.S.C. § 7121(a)(1) to be clear, and as such, limits the administrative resolution of a Federal employee’s grievance to the negotiated procedures set forth in the CBA. *Mudge v. United States*, 308 F.3d 1220, 1228 (Fed. Cir. 2002). Further, the Federal Circuit also found that all matters not specifically excluded from the grievance process by the CBA fall within the coverage of the CBA. *Id. at 1231*. As such, OPM cannot assert jurisdiction over the compensation or leave claims of Federal employees who are or were subject to a negotiated grievance procedure (NGP) under a CBA between the employee’s agency and labor union for any time during the claim period, unless the matter is or was specifically excluded from the CBA’s NGP. *See* 5 CFR 178.101(b).

Information obtained by OPM (i.e., Standard Form 50 showing the bargaining unit status in block 37) shows the claimant occupies a bargaining unit position. The CBA between the U.S. Department of Veterans Affairs and the American Federation of Government Employees covering the claimant during the period of the claim does not specifically exclude compensation issues from the NGP (Article 43). Therefore, this 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.

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.