

Date: March 23, 2004

Claimant: [name]

File Number: 03-0014

OPM Contact: Deborah Y. McKissick

The claimant was formerly employed as an Engineering Technician, GS-0802-09 with the Department of the Army at [installation]. He is filing a claim for backpay for potential misclassification during the claim period. The Office of Personnel Management (OPM) received the compensation claim on December 26, 2002, and the agency administrative report on October 17, 2003. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate this claim.

The claimant was a member of the American Federation of Government Employees, Local [number] during the claim period. OPM is responsible for reviewing and adjudicating all claims related to compensation and leave for civilian positions. However, OPM cannot take jurisdiction over the claims of Federal employees *that are or were subject* to a negotiated grievance procedure under a collective bargaining agreement 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 negotiated grievance procedure (NGP). (Emphasis added). This is because the 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 (U.S.C.) mandates that the grievance procedures in negotiated collective bargaining agreements 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). Because back pay issues were not specifically excluded from the NGP, they must be construed as covered by the NGP that the claimant was subject to during the claim period. Therefore, OPM has no jurisdiction to adjudicate the compensation claim for backpay.

This settlement is final. No further administrative review is available within the Office of Personnel Management. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States Court.