Date: March 1, 2006

Claimant: [name]

File Number: 05-0011

OPM Contact: Robert D. Hendler

The claimant is employed in a [position] in the [department], [directorate], Naval Medical Center, San Diego (NMCSD), Department of the Navy (DoN), in San Diego, California. He requests that the U.S. Office of Personnel Management (OPM) direct his agency to provide him with 10 hours of compensatory time for "official business *operational* conducted on a non workday—a Sunday [July 18, 2004]" under the provisions of title 5, Code of Federal Regulations (CFR), section 550.112. For the reasons discussed herein, OPM does not have jurisdiction to adjudicate this claim.

The record shows that claimant occupies a bargaining unit position covered by a collective bargaining agreement (CBA) which includes a negotiated grievance procedure (NGP). The claimant pursued this matter using the NGP. The agency administrative report notes that his grievance on this and other matters was denied in a final third step decision on January 21, 2005, which the union declined to advance to arbitration. The claimant states that because:

> …the local agreement does not *include* a claim of coverage concerning the matter in dispute, i.e., the award and then weeks later the denial of compensatory time for operational travel conducted during personal time. Moreover, black letter federal labor law and federal employment command law has long held that claims/complaints/grievances arising from local bargaining unit agreements must be based on explicit language contained in the agreement. Mr. Mason's flawed reasoning and apparent misunderstanding of federal employment law essentially stands this long held and commonly understood doctrine on its head.

The appellant's assertions regarding jurisdiction on this matter are not supported by binding legal precedent. OPM is responsible for reviewing and adjudicating all claims related to compensation and leave for civilian positions under the provisions of section 3702(b) of title 31 United States Code (U.S.C). However, OPM cannot take jurisdiction over the compensation or leave claims of Federal employees *that are or were subject* to an NGP under a 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 grievance procedures are 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, U.S.C 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.,* B-260475 (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, Local 3723, and the NMCSD. Compensation and leave issues are not specifically excluded from the NGP covering the claimant. For OPM purposes, that such matters are not specifically excluded from the NGP is enough to remove this claim from OPM jurisdiction.

We note that the claimant has exhausted his administrative remedies on this matter. Although we are not required to address the technical issues underlying his claim, we will take this opportunity to clarify OPM's long-standing interpretation of compensatory time for travel to an event that could not be scheduled or controlled administratively prior to the passage of the Federal Workforce Flexibility Act of 2004, the provisions of which became effective January 28, 2005.

The claimant's rationale is that he attended a "third-party funded programmatic/mission-focused (non-training) activity; i.e., the U.S. Army Medical Research and Material Command (USAMRMC) which administers the Congressional Directed Medical Research Program (CDMRP). CDMRP "organizes and conducts its peer review sessions through support contractors." He states that CDMRP and the contractors "are all organizations that are completely outside of both my current local organization as well as DoN itself. Neither I nor NMCSD nor for that matter DoN had any influence or any role whatsoever in either the scheduling of these programmatic-focused sessions and/or administratively controlling any aspect of the session's start or end times." He cites 50 Comp. Gen. 519 (1971) and 69 Comp. Gen. 545 (1990) in support of his contention his travel time should be viewed as hours of work because the event was not scheduled or controlled by an executive agency (NMCSD and DoN) since the contractor "arranged and managed" the event.

The basis of the claim is that the event in question could not be scheduled or controlled administratively and thus is compensable under 5 U.S.C. § 5542(b)(2)(B)(iv) and 5 CFR § 550.112(g)(iv). The Comptroller General (Comp. Gen.) decisions cited by the appellant are not on point with regard to his situation. The phrase "could not be scheduled or controlled administratively" refers to the ability of an executive agency, as defined in 5 U.S.C. § 105, to control the event that necessitates an employee's travel. For an event to qualify as administratively uncontrollable there must be a total lack of Government control. The control is assumed to be the agency's whether the agency has sole control or the control is achieved through a group of agencies acting in concert, such as a training program or conference sponsored by a group of agencies, or sponsored by one in the interest of all, or through several agencies participating in an activity of mutual concern.

In the instant case, the contractor's work was performed under the control of a component of an executive agency (USAMRMC). The claimant's agency provided his services in support of USAMRMC's CDMRP mission. NMCSD and USAMRMC are subordinate components of the same executive department; i.e., the Department of Defense. Therefore, the claimant's travel did not result from an event that could not be scheduled or controlled administratively. See Morris Norris, 69 Comp. Gen. 17 (1989); Hankins and Archie, B-210065, Apr. 2, 1984; Daniel L. Hubble, et al., 71 Comp. Gen 122, B-22963, B-229363.2, Dec. 23, 1991; B-180021, August 31, 1978.

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.