

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

**Claimant:** [name]

**Organization:** [agency component]  
Air Force Space Command  
Department of Air Force  
Peterson Air Force Base, Colorado

**Claim:** Request for Reinstatement of Leave

**Agency decision:** Denied

**OPM decision:** Denied; Lack of Jurisdiction

**OPM contact:** Robert D. Hendler

**OPM file number:** 06-0032

/s/ for

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

10/3/2006

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Date

The claimant was employed in a [position] in the [agency component], Air Force Space Command, Department of the Air Force, at Peterson Air Force Base (AFB), Colorado. The claimant seeks restoration of 308 hours of annual leave forfeited a second time. In an April 3, 2006, decision denying the claim, the Peterson AFB Civilian Personnel officer informed the claimant he could file a claim with the Office of Personnel Management (OPM) or:

...file a grievance through the negotiated grievance procedure in Article 31 (Attachment 3) of the Memorandum of Agreement between the Peterson Air Force Base Complex and Local 1867 of the American Federation of Government Employees [AFGE], dated 3 June 1999. You may use either the OPM claim procedure or the negotiated grievance procedure.

We received the claim request on April 20, 2006, and additional information from Peterson AFB civilian personnel office staff on June 13 and July 21, 2006. For the reasons discussed herein, we do not have jurisdiction to consider this claim.

Part 178 of title 5, Code of Federal Regulations, concerns the adjudication and settlement of claims for compensation and leave. Section 178.102 describes the procedures for submitting claims as well as the documentation that should accompany a claim. Paragraph (a)(3) of section 178.102 specifies this documentation should include a copy of the final written agency denial of the claim. Therefore, paragraph (a)(3) denotes that an employing agency already has reviewed and issued an initial decision on a claim before it is submitted to OPM for adjudication. In the instant case, the documentation submitted includes an activity-level rather than an agency-level decision. The record does not establish that the activity has been delegated agency-level claims settlement authority, and OPM may decline to review a claim where the employing agency has not issued a final written decision denying the claim. In addition, OPM's response to this request can be rendered on other jurisdictional grounds, as follows:

Information provided by the activity at our request shows the claimant was in a bargaining unit position covered by a CBA between the Peterson AFB Complex and AFGE, Local 1867. Section B of the NGP does not list leave claims as specifically excluded from the coverage of the NGP. Section G of the NGP states:

Employees must choose the procedures under which a complaint will be processed. If a matter is not excluded, the employee has the option of using either the negotiated grievance procedure or statutory appeal procedures. The employee's option is exercised when a timely, step one written grievance or appeal is filed under one of the procedures. Once the option is exercised, its procedures must be followed.

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 is 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 title 5, United

States Code (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).

Section 178.101, title 5, Code of Federal Regulations (CFR) is consistent with this controlling case law and states OPM does not have jurisdiction over "...claims concerning matters that are subject to negotiated grievance procedures under collective bargaining agreements entered into pursuant to 5 U.S.C. 7121(a)." OPM's regulations are entitled to deference and have the force and effect of law. See *Chevron v. NRDC*, 467 U.S. 837 (1984). Because compensation and leave issues are not specifically excluded from the NGP covering the claimant, they must be construed as covered by the NGP the claimant was subject to during the claim period. Since the NGP was available to the claimant when the claim arose and was his exclusive administrative remedy, OPM has no jurisdiction to adjudicate his leave claim.

Although we have no claims settlement jurisdiction in this case, we note the underlying issue is the claimant's disagreement with the activity's position that restored leave unused at the expiration of the established time limit for its use is forfeited with no further right to restoration regardless of the reason for forfeiture. This position is consistent with controlling regulations (5 CFR 630.306) which have the force and effect of law. See *Dr. James A. Majeski*, B-247196, April 13, 1992; *Matter of Patrick J. Quinlan*, B-188993, December 12, 1977; OPM File Number 02-0022, June 19, 2002.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the employees' rights to bring an action in an appropriate United States Court.