

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

Claimant: [name]

Organization: Office of Director
Veterans Affairs Medical Center
U.S. Department of Veterans Affairs
[city & State]

Claim: Paysetting

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 07-0044

/s/ for

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

1/11/2008

Date

The claimant is employed in a Claims Assistant, GS-998-6, position in the Office of Director, Veterans Affairs Medical Center, U.S. Department of Veterans Affairs (VA), in [city & State]. She requests her “step increment be matched” to her “previously held position with the federal government” and other changes in benefits, as appropriate. The U.S. Office of Personnel Management (OPM) received her claim request on July 26, 2007. We received additional information from her employing activity on September 20, 2007. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

Part 178 of title 5, Code of Federal Regulations (CFR), concerns the adjudication and settlement of claims for compensation and leave performed by OPM under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). Section 178.102(a)(3) of title 5, CFR, requires that an employing agency already has reviewed and issued an initial decision on a claim before it is submitted to OPM for adjudication. Based on the information submitted, we find no record of the claimant having filed a claim with her former employing agency or having received a written agency-level, i.e., VA-level, denial of claim on the matter at issue in her request. However, we may render a decision on this matter based on jurisdictional grounds.

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, 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 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).

Information provided by the claimant’s employing agency at our request shows the claimant was in a bargaining unit position during the period of his claim. The CBA between VA and the American Federation of Government Employees National Veterans Affairs Council of Locals, does not specifically exclude compensation and leave issues from the NGP (Article 42) covering the claimant. Therefore, the claimant’s compensation claim must be construed as covered by the NGP the claimant was subject to during the claim period. Accordingly, OPM has no jurisdiction to adjudicate this claim.

Although we have no jurisdiction to consider this claim, we find the claimant’s rationale is not supported by controlling Governmentwide regulations. Based on the information provided in her 2006 letter, the claimant was hired at grade GS-5 and her pay was set at step 1. The claimant asserts she was qualified for a grade GS-6 position. She also appears to assert her pay should have been set at step 6 because she previously held a GS-3 position at step 6. The Government is not required to match a previously held salary. As 5 CFR 531.211(b) makes clear, an agency is only obligated to set the payable rate of basic pay at the minimum rate of the rate range for the employee’s position of record. Setting pay above the minimum rate is at the discretion of the agency, whether based on the superior qualifications and special needs pay-setting authority in

5 CFR 531.212 or the maximum payable rate (MPR) rule in 5 CFR 531.221. Furthermore, the rules for determining an employee's MPR when the employee's highest previous rate is based on a GS rate in 5 CFR 531.221(b) do not provide for matching steps between grade levels as the claimant appears to assert. The Government also is not required to hire an employee at the highest grade for which they qualify. Such decisions are vested in the employing agency.

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.