

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

Claimant: [name]

Organization: [agency component]
U.S. Department of Veterans Affairs
[city & State]

Claim: Overtime pay

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 08-0040

//Judith A. Davis for

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

8/21/2008

Date

The claimant occupies a [position], job in [agency component], U.S. Department of Veterans Affairs (VA), in [city & State]. Although not stated in the claim request, it appears he seeks assistance from the U.S. Office of Personnel Management (OPM) to obtain payment for overtime he asserts he worked from 2005 through 2007. While the correspondence includes a reference to the Fair Labor Standards Act (FLSA), it does not state whether the request was submitted under the overtime pay claim provisions of the FLSA (title 5, Code of Federal Regulations (CFR) part 551, subpart G) or 5 CFR part 178 concerning the adjudication of Federal civilian employee compensation and leave claims. OPM received the request on June 24, 2008. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

Part 178 of title 5 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 5 CFR requires an employing agency to have already 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 signed, written claim with her former employing agency as required by statute and regulation (31 U.S.C. § 3702(b)(1) and 5 CFR § 178.102(a)). FLSA claims may be submitted directly to OPM. However, OPM may render a decision on this matter based on jurisdictional grounds for the claim in its entirety.

OPM has authority to adjudicate compensation and leave claims for most Federal employees under the provisions of 31 U.S.C. § 3702(a)(2) and FLSA claims under the provisions of 29 U.S.C. § 204(f). However, OPM cannot take jurisdiction over the FLSA, 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 the matter is or was specifically excluded from the agreement's NGP. The Federal courts have found Congress intended such a grievance procedure 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 grievance procedures in negotiated CBAs are to 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 and his employing activity at our request shows the claimant occupied a bargaining unit position during the period of the claim. The CBA between the VA Medical Center and the Service and Employee's International Union (SEIU) Local [number] in effect during the period of the claim does not specifically exclude FLSA, compensation or leave issues from the NGP (Article XIV) covering the claimant. Therefore, the claimant's overtime pay request 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.

As provided in section 5 CFR § 551.708, this decision is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which OPM administers

the FLSA. There is no further right of administrative appeal. This decision is subject to discretionary review only under conditions specified in 5 CFR § 551.708.

Those aspects of this decision reviewed under the authority of 31 U.S.C. § 3702 and 5 CFR part 178 are not subject to further administrative review. The claimant has the right to bring action in the appropriate Federal court if dissatisfied with this decision.