

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

Claimant: [name]

Organization: U.S. Postal Service

Claim: Provide additional lump-sum
payment for annual leave

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 09-0046

//Judith A. Davis for

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

11/20/2009

Date

The record shows the claimant resigned from a position with the U.S. Postal Service (USPS) effective August 8, 2008. She was employed in a [position] with the U.S. Department of Veterans Affairs (VA) Medical Center (VAMC) in [city & State], immediately prior to her starting work for USPS on July 8, 2006. In her July 20, 2009, letter to the U.S. Office of Personnel Management's (OPM) Center for Merit System Accountability, received on July 29, 2009, the claimant states her terminal leave payment from USPS was incorrect because it was based on an incorrect leave computation date. Claimant states she submitted her request to VA and USPS, "but still no resolution." For the reasons discussed herein, the claim is denied for lack of jurisdiction.

OPM received a November 17, 2008, letter from the claimant on this matter on December 3, 2008. OPM's December 4, 2008, letter to the claimant stated:

OPM does not have any authority to investigate or settle claims made against an agency which has independent settlement authority under the law. The applicable law in this case, section 2008(c) of title 39, United States Code (U.S.C.), authorizes USPS to consider and settle all claims made against it. Therefore, OPM does not have the authority to consider or settle leave claims from former current or former USPS employees or intervene in such matters.

It also appears that you also may be seeking payment for terminal leave from the U.S. Department of Veterans Affairs (VA) for whom you state you worked prior to your employment with USPS. Part 178 of title 5, Code of Federal Regulations (CFR), concerns the adjudication and settlement of claims for compensation and leave. Section 178.102 describes the procedures for submitting claims and the documentation that should accompany a claim. As specified in 5 CFR 178.102(a)(3) and 5 CFR 178.102(b), this includes a copy of the final written agency-level denial of the claim. Therefore, claims regulations require an employing agency to have already reviewed and issued a claim decision before it is submitted to OPM for adjudication.

Based on the information you submitted, we find no record of such a written denial of your claim from a VA office authorized to issue such a denial. We also find no record of your having submitted a signed written claim to VA as required by statute (section 3702(b)(1) of title 31, United States Code and regulation (5 CFR 178.102) in order to preserve a claim against the United States (5 CFR 178.104(a)).

In addition, OPM cannot take jurisdiction over compensation and leave claims of current or former Federal employees that 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 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.*, B-260475 (June 13, 1995); *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992).

Our letter suggested the claimant contact her former servicing VA human resources office (HRO) for help in determining which claims filing method she would be required to use should she decide to seek payment from VA.¹

Claimant's July 20, 2009, letter to OPM enclosed copies of: (1) claimant's February 25, 2009, letter to USPS seeking the additional lump-sum payment she believes is due her, (2) USPS's March 18, 2009, response stating claimant was overpaid rather than underpaid, (3) claimant's March 31, 2009, letter to the [city] VAMC seeking the aforementioned additional lump-sum payment, and (4) the July 14, 2009, response from the VAMC's Chief, Fiscal Service, advising the claimant any action on this matter "should be made by the USPS payroll department as you are no longer in the Birmingham VAMC system."

Information provided by [city] VAMC's HRO at our request shows the claimant occupied a bargaining unit position during the period of the claim represented by the American Federation of Government Employees (AFGE). The CBA between the VA and the AFGE National Veterans Affairs Council of Locals covering the claimant during the period of the claim does not specifically exclude compensation issues from the NGP (Article 42). Therefore, the claimant's lump-sum payment 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.

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.

¹ OPM has been advised the Director, Compensation and Classification Service (055), Office of Human Resources Management, VA Central Office, retains authority to issue VA-level claims decisions for claims not subject to an NGP.