

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: Pay setting

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM file number: 10-0017

//Judith A. Davis for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Merit System Audit and Compliance

3/18/10

Date

The claimant is employed in a Program Support Assistant, GS-303-7, position in [agency component], U.S. Department of Veterans Affairs (VA), in [city & State]. He seeks additional compensation from the date of his appointment at [agency component] on April 29, 2007, through the present time because he believes his salary was not set properly based on his “Highest Previous Rate (HPR) previously earned at another Federal agency.” In his December 24, 2009, letter the claimant requests the U.S. Office of Personnel Management (OPM): “investigate the Human Resources department with a keen eye to their veracity and report any violations of USC 1001 [sic] and OPM regulations to the VA’s OIG for prosecution, as I have previously contacted them at the urging of Senator Feinstein’s office.” OPM received the claim on January 5, 2010. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

OPM has authority to adjudicate compensation and leave claims for many Federal employees under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). However, 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 the matter is or was specifically excluded from the CBA’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).

The CBA between VA and the American Federation of Government Employees National Veterans Affairs Council of Locals in effect during the period of the claim does not specifically exclude compensation and leave issues from the NGP (Article 42) covering the claimant. Therefore, the claimant’s pay setting dispute must be construed as covered by the NGP the claimant was subject to during the claim period. Accordingly, OPM has no jurisdiction to adjudicate the claimant’s pay setting claim.¹

We note the claimant’s reliance on the compensation and leave claims settlement authority in 31 U.S.C. § 3702(a)(2) to resolve what he describes as felonies under “U.S. Code 1001” is misplaced. The authority in section 3702 is narrow and limited to adjudication of compensation and leave claims. Section 3702 does not include any authority to investigate criminal matters or intervene in Inspector General investigations conducted under the authority of 5 U.S.C. App.3, § 7 as the claimant asks us to do.

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 We note that in his December 24, 2009, letter the claimant states he sought assistance from his union, AFGE Local [number].