

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

Claimant: [name]

Organization: Federal Aviation Administration
U.S. Department of Transportation
[city & State]

Claim: Pay conversion

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 10-0048

//Judith A. Davis for

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

9/10/2010

Date

The claimant formerly occupied an Air Traffic Control Specialist, FG-2152-10, position with the Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT). He seeks to file a compensation claim to recover pay lost due to the Government's failure to provide him with a two-step increase when he transferred to a higher level airport facility which was delayed for 14 months and compensation he would have earned had he not resigned from his Federal position in April 2003. The U.S. Office of Personnel Management (OPM) received the claim on July 29, 2010. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

OPM has authority to adjudicate compensation and leave claims for most 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 that 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).

The claimant states he is not a member of a bargaining unit, so a grievance procedure is no longer available to him and the union refuses to process a grievance. Information provided by the claimant and obtained from the National Air Traffic Controllers Association (NATCA) Web site shows the claimant was in a bargaining unit position during the period of his claim. The CBA between the FAA and the NATCA AFL-CIO, in effect at the time of and subsequent to the claimant's transfer to a higher level airport facility, does not specifically exclude compensation issues from the NGP (Article 9) covering the claimant. Therefore, the claimant's pay claim must be construed as covered by the NGP the claimant was subject to during the claim period. As is clear in *Muniz v. United States*, 972 F.2d 1304 (Fed. Cir. 1992), the fact that the claimant is no longer employed by the FAA does not remove the Civil Service Reform Act's jurisdictional bar for claims covered by the CBA arbitration and grievance procedures that arose during and from his employment with the FAA. Accordingly, OPM has no jurisdiction to adjudicate this claim.

Although we may not render a decision on this claim, we note the claimant appears to cite Executive Order (EO) 13197, January 18, 2001, as conferring jurisdiction on OPM to adjudicate pay claims. It does not. Instead, this EO clarifies OPM's authority to review and report on agencies' human resources management programs and practices of an agency and to report on the effectiveness of such programs and practices. The claimant also appears to rely on the Age Discrimination in Employment Act (ADEA) and the Equal Pay Act (EPA) as a basis to file a claim with us. Both the ADEA and the EPA are enforced by the Equal Employment Opportunity Commission (EEOC).

The claimant's apparent reliance on the Whistleblower Protection Act (WPA) is also misplaced. Under 5 U.S.C. § 1213, the Office of Special Counsel (OSC) and under 5 U.S.C. § 1221, the Merit Systems Protection Board (MSPB), have jurisdiction over WPA complaints and appeals.

The claimant also characterizes the FAA's actions as constituting a prohibited personnel practice (PPP). Under 5 U.S.C. § 1212, OSC is responsible for investigating PPP's and under 5 U.S.C. § 1221, an employee or former employee may seek corrective action as a result of a PPP described in 5 U.S.C. § 2302(b)(8). The claimant's dissatisfaction with and challenges to the actions of the MSPB and the Federal Labor Relations Authority are not issues reviewable by OPM and are not covered by the pay claims settlement process.

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.