

**U.S. Office of Personnel Management
Leave Claim Decision
Under section 3702 of title 31, United States Code**

Claimant: [name]

Organization: Internal Revenue Service
[city & State]

Claim: Family and Medical Leave Act
violation

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 10-0032

//Judith A. Davis for

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

3/1/2011

Date

The claimant is employed by the Internal Revenue Service (IRS) in [city & State]. In her November 4, 2009, letter to the U.S. Department of Labor (DOL), the claimant states that she believes her rights have been violated and that no one has addressed the untimely processing of her FMLA request. In its February 4, 2010, letter forwarding the claimant's letter to the U.S. Office of Personnel Management (OPM), DOL states it has determined the issues raised in the claimant's letter do not come under DOL's jurisdiction as they relate to a Federal employee covered by Title II of the FMLA and that the claimant has been advised of the referral. OPM received the referral on February 16, 2010, and additional information from IRS on April 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 Federal employees under the provisions of section 3702(a)(2) of title 31, United States Code (U.S.C.). OPM's adjudication authority is an administrative remedy not a judicial remedy. *See* 5 CFR part 178. Section 7121(a)(1) of title 5, United States Code, directs that except as provided elsewhere in the statute, the grievance procedures in a negotiated collective bargaining agreement (CBA) shall be the exclusive administrative remedy for resolving matters that fall within the coverage of the CBA. The Court of Appeals for the Federal Circuit has found the plain language of 5 U.S.C. 7121(a)(1) to be clear, and as such, limits the administrative resolution of a Federal employee's grievances to the negotiated procedures set forth in the CBA. *Mudge v. United States*, 308 F.3d 1220, 1228 (Fed. Cir. 2002). Further, the Federal Circuit also found that all matters not specifically excluded from the grievance process by the CBA fall within the coverage of the CBA. *Id. at 1231*. As such, OPM cannot assert jurisdiction over the compensation or leave claims of Federal employees who are or were subject to a negotiated grievance procedure (NGP) under a 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. *See* 5 CFR 178.101(b).

The CBA between IRS and the National Treasury Employees Union in effect during the period of the claim does not specifically exclude leave issues from the NGP (Article 41) covering the claimant. Therefore, the claimant's FMLA dispute must be construed as covered by the NGP the claimant was subject to during the claim period.¹ Accordingly, OPM has no jurisdiction to adjudicate the claimant's FMLA complaint or to intervene in this matter.

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 It appears the claimant is already aware of her rights under the NGP as the claimant's Exhibit 19 is a July 24, 2009 grievance regarding AWOL based on Articles 41 and 34 of the CBA related to her FMLA request dated July 15, 2009.