

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

Claimant: [name]

Organization: [agency component]
Internal Revenue Service
U.S. Department of the Treasury

Claim: Payment for lost restored annual leave

Agency decision: Denied

OPM decision: Denied; Lack of jurisdiction

OPM file number: 10-0040

//Judith A. Davis for

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

10/24/2011

Date

The claimant is employed as a General Attorney (Tax), GS-905-15, with the [agency component], Internal Revenue Service (IRS), U.S. Department of the Treasury, in [city & State]. He seeks payment in the amount of \$13,224.64 for what he describes as restored leave that was improperly forfeited through the misinterpretation of regulations and incorrect instructions given to him. The claimant states: "I have lost 208 hours and request that my claim be for payment of the 208 hours." The U.S. Office of Personnel Management (OPM) received the claim on June 4, 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, U.S.C., 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 grievance 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 Notice of Personnel Action, SF-50, we received from the agency shows the claimant occupied a bargaining unit position during the period of the claim. The negotiated agreement between the [agency component], IRS, and the National Treasury Employees Union (NTEU) covering the claimant and in effect during the period of the claim does not specifically exclude compensation and leave issues from the NGP (Article 33). Therefore, the claimant's leave claim 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 claim 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.