

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

**Claimant:** [name]

**Organization:** [agency component]  
Federal Emergency Management  
Agency  
[city & State]

**Claim:** Recoupment of leave due to  
incorrect calculation

**Agency decision:** N/A

**OPM decision:** Denied; Lack of jurisdiction

**OPM file number:** 10-0045

//Judith A. Davis for

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

8/10/2011

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Date

The claimant was employed as a Core-Attorney, GS-905-13, with the [agency component], Federal Emergency Management Agency (FEMA), in [city & State]. He requests that his service computation date leave be corrected for the time he was previously employed by the Social Security Administration (SSA), that his leave earning rate be changed from 6 hours to 8 hours per pay period at the appropriate time during his employment with SSA, and that the amount of leave he should have earned “be reinstated.” The U.S. Office of Personnel Management (OPM) received the claim request on June 2, 2010, additional information from FEMA on July 14, 2010, and additional information from SSA on July 27, 2010. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The claimant states that after he was hired by SSA as an Attorney-Advisor (General Position), GS-905-11, in July 2004<sup>1</sup>, he sought to “buy back” his military service time for two periods of military service; i.e., June 26, 1969, through June 5, 1973, and June 6, 1973, through June 30, 1984. He states that when he was given a service computation date of June 30, 1993, he asked:

why my other time was not counted, I was told that the time would only be considered for retirement time, not leave accrual because I could not supply a DD-214 as support. This is after the Coast Guard and SSA-OHA had certified my service, and [human resources staff member] had certified the entire time for payment.

The claimant refers to the Application to Make Service Credit Payment for Civilian Service, Federal Employees Retirement System (FERS), Standard Form (SF) 3608, which he signed on September 19, 2005. The claimant states that SSA credited him with 11 years of service and that he earned 6 hours of annual leave per pay period. He states that had SSA credited him with the proper service time, he would have started accruing 8 hours of annual leave. The claimant states: “I have estimated that I have been shorted 208 hours of annual leave and respectfully request that it be reinstated.”

Section 178.102(a) of title 5, Code of Federal Regulations (CFR), indicates that the claimant’s employing agency must review and issue a written decision on a claim before it is submitted to OPM for adjudication. The claimant is responsible for preserving the claim period, proving the signed, written claim was filed within the applicable statute of limitations. *See* 5 CFR 178.104. The information provided by the claimant with his request does not show he has filed a signed, written claim with the FEMA component authorized to issue an agency-level decision or that he has received such a decision. Nevertheless, we may render a decision based on 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)

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<sup>1</sup> Claimant transferred to DHS/FEMA effective October 26, 2008.

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 record shows the claimant occupied a bargaining unit position while employed at SSA. The CBA between SSA and the American Federation of Government Employees in effect when the claim arose does not specifically exclude compensation or leave issues from the NGP (Article 24) covering the claimant. Therefore, the claimant's request for additional leave and correction of his service computation date for leave 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 leave claim. 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 SSA 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 SSA.

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.