

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

Claimant: [name]

Organization: [organizational component]
Department of Veterans Affairs
[city & State]

Claim: Request for highest previous rate

Agency decision: N/A

OPM decision: Denied; Lack of jurisdiction

OPM file number: 12-0028

//Judith A. Davis for

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

1/31/2013

Date

The claimant is currently employed in an Administrative Support Assistant (OA), GS-303-5, position with the Department of Veterans Affairs (VA) in [city & State]. In her May 25, 2012, letter received by the U.S. Office of Personnel Management (OPM) on June 1, 2012, the claimant seeks to challenge the setting of her pay when she was placed in her current position at GS-5, step 2. We received additional information from her employing agency on July 25, 2012. For the reasons discussed herein, the claim is denied.

The record shows the claimant was placed in her current position effective May 20, 2012. She asks OPM to review her servicing human resources office decision not to increase her pay from GS-5, step 2, to GS-5, step 10, in that position “as requested by...the new Clinic Manager for the Community Based Outpatient Clinics (CBOCs) located in Benton Harbor, Grand Rapids, Lansing, and Muskegon.” The claimant states the Clinic Manager sent a request to the Battle Creek human resources office on April 23, 2012, on her behalf to have “the step increased to the Step 10 according [to] the Highest Previous Rate regulations in Title 5 USC section 5334(b), 5 CFR [531.222] and according to my skill level which shows on my resume as a GS 10 Step 1.” The claimant states she contacted VA’s ORM (Office of Resolution Management) Resolution Support Center, met with “EEO Abraham Paulson,” and spoke with her “Union Representative AFGE Loc 1629” and “was advised to put in this letter [her OPM claim request] by all.”

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).

Information provided by the agency shows the claimant occupies a bargaining unit position. The Master Agreement between the Department of Veterans Affairs and the American Federation of Government Employees covering the claimant during her employment with the VA, and in effect during the period of the claim, does not specifically exclude compensation issues from the NGP (Article 43 in the CBA effective March 2011). Therefore, this claim must be construed as covered by the NGP the claimant was subject to during the claim period and OPM has no jurisdiction to adjudicate this claim.

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.