

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

Claimant: [name]

Organization: Kenai Automatic Flight Service Center
Federal Aviation Administration
U.S. Department of Transportation
Kenai, Alaska

Claim: Meal Break Not Taken Premium Pay

Agency decision: N/A

OPM decision: Denied; Lack of Jurisdiction

OPM contact: Robert D. Hendler

OPM file number: 06-0055

/s/ for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability

9/28/2006

Date

The claimant is employed in a [position] at the Kenai Automatic Flight Service Station, Federal Aviation Administration (FAA), U.S. Department of Transportation, in Kenai, Alaska. He requests the Office of Personnel Management (OPM) direct his agency to restore 15 “Meal Break Not Taken” payments rescinded by the agency. We received the claim request on August 8, 2006, dated July 12, 2006, and additional information from the claimant on August 23, 2006. For the reasons discussed herein, we do not have jurisdiction to consider this claim.

The claimant seeks to file a “Title 5/FLSA [Fair Labor Standards Act]” claim for “Meal Break Not Taken” payments for 15 dates between July 17, 2004, and September 25, 2004, based on “section 5546(e)(1)” of title 5, United States Code (U.S.C.). In his initial request, he states he was a member of a collective bargaining unit during the period of his claim, but states his claim is excluded from the bargaining unit’s negotiated grievance procedure (NGP). However, he notes in his August 23, 2006, communication, the exclusion pertains to FLSA claims and “if my claim turns out to be a title 5 claim” it would be covered by the NGP.

Section 5546a(e)(1) of title 5, U.S.C., provides for “premium pay to any air traffic controller or flight service station specialist...who, while working a regularly scheduled eight-hour period of service, is required...to work during the fourth through sixth hours of such period without a break of thirty minutes for a meal.” This is separate and distinct from FLSA overtime pay provided for in 29 U.S.C. § 207. Therefore, the claimant’s request is not covered under the FLSA or its claims settlement procedures.

Part 178 of title 5, Code of Federal Regulations, concerns the adjudication and settlement of claims for compensation and leave. Section 178.102 describes the procedures for submitting claims as well as the documentation that should accompany a claim. Paragraph (a)(3) of section 178.102 specifies this documentation should include a copy of the final written agency denial of the claim. Therefore, paragraph (a)(3) denotes that an employing agency already has reviewed and issued an initial decision on a claim before it is submitted to OPM for adjudication. In the instant case, the documentation submitted indicates the claimant received a local-level rather than an agency-level denial. The record does not show that an appropriate office in FAA has reviewed or issued a decision on this claim, and OPM may decline to review a claim where the employing agency has not issued a final written decision denying the claim. In addition, OPM’s response to this request can be rendered on other jurisdictional grounds, as follows.

OPM cannot take jurisdiction over the compensation or leave claims of Federal employees who are or were subject to a 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 is to be the exclusive administrative remedy for matters not excluded from the grievance process. *Carter v. Gibbs*, 909 F.2d 1452 (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 title 5, U.S.C., mandates that the grievance procedures in any negotiated CBA shall be the exclusive administrative procedures for resolving matters covered by the agreement. *Accord, Paul D. Bills, et al.*, B-260475 (June 13, 1995); *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992).

Information provided by the claimant shows he was in and continues to occupy a bargaining unit position covered by a CBA between the FAA and the National Association of Air Traffic Specialists. Section 7 of the NGP excludes FLSA matters from the scope of the NGP, but does

not address other pay claim matters. This requires us to conclude that, because non-FLSA compensation issues are not specifically excluded from the NGP covering the claimant, they must be construed as covered by the NGP the claimant was subject to during the claim period. Since the NGP was available to the claimant when the claim arose and was his exclusive administrative remedy, OPM has no jurisdiction to adjudicate his pay claim.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the employee's right to bring an action in an appropriate United States Court.