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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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HEREBY REPLY TO: B-191501

[Determination of Service Status For Period of Employment with Public Health Service] June 12, 1979

Miss Peggy S. Pentz
7865 Briardale Terrace
Rockville, Maryland 20855

neg. ad. pursuant to public reading

Dear Miss Pentz:

Reference is made to the letter you personally delivered to this Office on March 20, 1979, requesting reconsideration of Comptroller General's decision B-191501, March 8, 1979. We have also for consideration the material on Public Health Service inactive Reserve officers which you subsequently furnished.

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In the decision it was determined that you were not entitled to include time spent between 1958 and 1964 as a civilian employee with the International Cooperation Administration, Department of State, as "active service with the Public Health Service" for purposes of establishing eligibility for retirement from the Commissioned Corps of the Public Health Service (PHS) under the provisions of 42 U.S.C. 212. It was noted in the decision that you were appointed a member of the inactive Reserve of the Commissioned Officer Corps of the PHS in 1957 and that the PHS was the primary recruitment agent for certain programs of the International Cooperation Administration at the time. It was also noted that after you were recruited for employment with the International Cooperation Administration in 1958, you worked closely with, and under the supervision of, PHS officers who were on active duty. It was further noted that after you were called to active duty as a commissioned officer in the PHS in 1964, you were detailed to perform the same type of duties with the International Cooperation Administration that you had performed between 1958 and 1964 while employed by that agency. Nevertheless, it was concluded that your employment with the International Cooperation Administration between 1958 and 1964 was not "active service with the PHS", since neither the PHS as an entity nor the Surgeon General as the head of that organization had any direct authority over you. In that connection, it was noted that your salary was paid by, and you were carried on the employment rolls of, the International Cooperation Administration. That agency--not the PHS--had the final authority over the conditions of your employment and your work projects, so that you could not properly be regarded as being on "active service with the PHS" at the time.

In your letter requesting reconsideration, and in informal discussions concerning the matter with our staff, you have expressed

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disagreement with that conclusion. The basic thrust of your argument is that, taking all of the circumstances together, you could properly be considered as having performed "active service with the PHS" between 1958 and 1964. You emphasize that the PHS recruited you for employment with the International Cooperation Administration, and PHS personnel participated in that agency's projects. You therefore suggest that the international health program for which you were recruited should be viewed as a "collaborative" program between the PHS and the International Cooperation Administration with "flexible" personnel policies. In that regard, you say that the only reason you were not called to active duty as a PHS officer in 1958 was that no active duty "slot" was available then, and you contend that your employment in lieu of active duty was simply a matter of PHS administrative policy. You assert that the Comptroller General's decision rendered in your case was based strictly on narrow administrative criteria, and that the essential nature of your participation in the international health program as a whole was not properly taken into consideration.

In addition, you contend that the decision was incorrect and unfair in several other respects. You say that the digest set out above the decision does not accurately state the facts or the law. You also say that it is improper and misleading to use the word "civilian" to refer to your status as an employee of the International Cooperation Administration between 1958 and 1964. Further, you assert that the decision improperly fails to mention legal precedent which supports your position. Also, you suggest that your case is unique, and a ruling in your favor would not affect any other PHS officer. Finally, you say that if you do not receive PHS credit for your employment with the International Cooperation Administration, you will be denied all retirement credit for those years of employment because you relinquished your eligibility for a Civil Service retirement annuity when called to active duty in the PHS.

With respect to your basic contention that your employment with the International Cooperation Administration constituted "active service with the PHS", we wish to point out that you were not employed by the PHS in 1958. While the PHS may have played a roll in your recruitment, you were actually employed by the International Cooperation Administration between 1958 and 1964. That agency, and not the PHS, had the exclusive authority to hire, dismiss, transfer, and initiate disciplinary action against you. Moreover, your work

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assignments involved projects of the International Cooperation Administration, of the PHS. Although you may have worked closely with PHS officers assigned to the International Cooperation Administration, you were not performing active service with the PHS itself. Thus, we have no alternative but to conclude that your employment with the International Cooperation Administration did not constitute "active service with the PHS" within the terms of 42 U. S. C. 212.

With regard to your objections to the wording of the decision and its digest, it should be noted that the digest merely serves the purpose of providing the reader with a brief summary of the contents of the decision and has no controlling legal effect in and of itself. Furthermore, we do not find that it was inaccurate or misleading in the decision to describe your work with the International Cooperation Administration as being "civilian" employment.

As to your assertion that legal precedents in support of your position were improperly ignored, it appears that you may be referring to several memorandums written by staff members of the Office of General Counsel, Department of Health, Education, and Welfare, which were submitted to us in connection with your case. We considered those memorandums as they were pertinent to your case but did not find in them a legal justification for permitting the service credit you claim.

Your statement that your case is unique is not a matter which is pertinent to the issue of your entitlements under the law.

Finally, you have suggested that unless you receive PHS credit for your employment with the International Cooperation Administration, you will be unfairly denied all retirement credit for those years of employment. It appears that between 1958 and 1964 you participated in the Civil Service retirement program, and you contributed to the retirement fund of that program. However, when you accepted an active duty commission with the PHS in 1964, you elected to withdraw your retirement deductions from the fund. Under the provisions of 5 U. S. C. 8334(d) and (e), if an employee redeposits an amount refunded, plus interest from the date refund was made to the date of redeposit, retirement credits may be restored. The extent to which you may be eligible for recredit and the conditions involved are subjects which you may wish to take up with the Office of Personnel Management (formerly the Civil Service Commission), which has

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exclusive jurisdiction over Civil Service retirement matters. However, your earlier election to withdraw your Civil Service retirement deductions for the years 1958-1964 is not a factor which would operate to give you PHS retirement credit for those years.

In conclusion, we regret that you find the determination made in your case to be unsatisfactory. Nevertheless, your letter requesting reconsideration, and your other correspondence concerning this matter, contain no information which was not fully considered by us in arriving at the decision in your case. Accordingly, there is no basis to revise that decision.

We are sending copies of this letter to Congressmen Bob Wilson and Bob Stump who expressed interest in your case.

Sincerely yours,


Deputy Comptroller General
of the United States