DECISION

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

e1087

FILE: B-131259

DATE: JUL 6 1976

98338

MATTER OF: Carlyle P. Stallings - Expert employee - Claim for pay raise under Executive Order 11691, dated December 15, 1972.

DIGEST:

Expert claims additional compensation on basis of pay increases authorized by Executive Order No. 11691, December 15, 1972. Claim disallowed as expert's rate of pay is fixed by administrative action, no provision in appointment made such increase automatic, and no administrative action occurred to increase rate under 5 U.S.C. § 5307.

By a letter dated January 6, 1976, Mr. Carlyle P. Stallings appealed that portion of Certificate of Settlement No. Z-2537261, issued June 19, 1974, which was not considered in our decision B-131259, January 23, 1976, to wit: the disallowance of his claim for extra compensation from January 7 through March 31, 1973, equal to the general pay raise granted Government workers under Executive Order No. 11691, dated December 15, 1972. In addition, Mr. Stallings requests extra compensation from October 1, 1972, to January 6, 1973, as the pay raise granted by Executive Order No. 11691 was made retroactive to October 1, 1972, by the United States Court of Appeals in the case of National Treasury Employees Union v. Nixon, 492 F.2d 587 (D.C. Cir. 1974).

The record shows that Mr. Stallings was employed as a expert with the Price Commission and Cost-of-Living Council from June 19, 1972, through March 31, 1973, under the authority of 5 U.S.C. § 3109 (1970) and Public Law 92-210, 85 Stat. 743, December 22, 1971. Standard Form 50 (SF-50), dated June 16, 1972, is the only evidence of the terms and conditions of Mr. Stallings's employment as an expert. No formal contract was signed by Mr. Stallings and the Government.

The SF-50 shows Mr. Stallings's salary as $26,352 per annum, the General Schedule rate for grade 14, step 7, and $101.38 per day, the daily equivalent of said General Schedule rate computed in accordance with 5 U.S.C. § 5504 (1970). As we noted in our decision, B-131259, supra, Mr. Stallings, like all experts employed under the provisions 5 U.S.C. § 3109 and Public Law 92-210, was employed at a daily rate. The per annum rate appears on his SF-50 solely for payroll computer purposes.

We further noted in said decision that as an expert employed on a daily basis, Mr. Stallings was not a "regular or permanent"

employee. Mr. Stallings, however, states in his letter of January 6, 1976, that his SF-50 described his appointment as a "Regular Tour". Hence, he contends that he is eligible for additional compensation on the basis of general increases authorized by Executive Order No. 11691.

The notation "Regular Tour of duty" found in the "Remarks" portion of Mr. Stallings's SF-50 referred only to his work schedule. It had no bearing on the type of appointment given Mr. Stallings and did not convert his status as an expert hired pursuant to 5 U.S.C. § 3109 into the status of a regular or permanent employee.

The general pay raise effected by Executive Order No. 11619 was made pursuant to 5 U.S.C. § 5305 (1970) and did not apply to employees whose pay is fixed by administrative action. The certificate of settlement correctly pointed out that 5 U.S.C. § 5307 (1970), which applies to employees whose pay is fixed by administrative action, is permissive. Since pay of experts hired pursuant to 5 U.S.C. § 3109 is fixed by administrative action, it is covered by section 5307. Without a provision in an expert's appointment making increases under section 5305 automatic and in the absence of administrative action by an appropriate agency official authorizing such an increase under 5 U.S.C. § 5307, an expert is not entitled to an increased rate of pay on the basis of an increase in the General Schedule rate of pay under 5 U.S.C. § 5305.

Mr. Stallings's SF-50, the only evidence of the terms of his employment, contains no provision for an automatic increase in his rate of pay. As noted earlier, the designation "Regular Tour of duty" referred only to Mr. Stallings's work schedule. Furthermore, no administrative action was taken by an appropriate agency official to make the pay increase applicable to him. Accordingly, that portion of the Certificate of Settlement issued June 19, 1974, which denied Mr. Stallings's claim for additional compensation, is hereby sustained.

R.F. KELLER

Deputy Comptroller General
of the United States