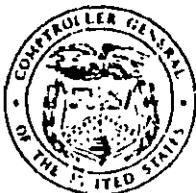


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**DECISION**



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

**FILE:** B-186046

**DATE:** November 9, 1976

**MATTER OF:** William E. Pope, Jr. - Claim for Inclusion  
of Post Differential in Lump-Sum Leave Payment

**DIGEST:** Employee evacuated from Vietnam to United States no longer received post differential and therefore is not entitled to inclusion of post differential in computation of lump-sum payment for accumulated annual leave upon separation from service in United States.

By letter dated January 21, 1976, Mr. William E. Pope, Jr. requests reconsideration of the determination by the Transportation and Claims Division (Z-2592524, January 19, 1976) disallowing his claim for additional compensation representing a 25 percent post differential which he alleges should have been included in the lump-sum payment for accumulated annual leave he received upon retirement from Government service.

The record shows that Mr. Pope retired in Vietnam from the Central Intelligence Agency (CIA) on June 30, 1973, and was reemployed without a break in service with the Defense Attache Office (DAO) in Saigon. He was notified on March 17, 1975, that he was to be separated from service with the DAO because of a reduction in force (RIF) action effective June 30, 1975. Due to the emergency situation that developed in Vietnam, he was instead evacuated on April 11, 1975. At that time he was issued another RIF notice and travel orders authorizing service in the United States for 60 days with separation from Government service on June 21, 1975. Mr. Pope contends that the lump-sum payment for accumulated annual leave which he received upon retirement should have included the 25 percent post differential he received while stationed in Vietnam.

The statutory provision which governs lump-sum payment for accumulated annual leave is 5 U.S.C. 5551 (1970). That section provides in part that "The lump-sum payment shall equal the pay the employee or individual would have received had he remained in the service until expiration of the period of the annual or vacation leave." The Comptroller General has held that the lump-sum leave payment is to be computed on the basis of the employee's rights at the time of separation under all applicable laws and

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regulations existing at that time which would have affected his compensation had he remained in the service for the period covered by his leave. 26 Comp. Gen. 102 (1946); 36 id. 1<sup>9</sup> (1950); 38 id. 161 (1958).

At the time of his separation Mr. Pope was not entitled to post differential. Section 532(e) of the Standardized Regulations (Government Civilians, Foreign Areas) provides that an employee's entitlement to post differential terminates as of the close of business on the date the employee departs his post for leave or detail during the period when the post is in an emergency evacuation situation.

On the basis of the above, the Transportation and Claims Division denied Mr. Pope's claim, stating that because his rate of compensation once he had returned to the United States did not include post differential, his lump-sum payment was properly computed on the basis of service in the United States for the period covered by the lump-sum payment rather than on the basis of service at a foreign post.

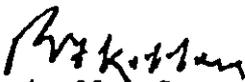
In his letter of appeal Mr. Pope presents no new or additional facts but instead reiterates the arguments he presented to the Transportation and Claims Division. It appears he is claiming that he would have been separated in Vietnam but for the requirement that an agency give notice to an employee at least 30 days before his removal from service through a RIF action. Therefore, he states, it was for the Government's convenience that he was transferred to the United States for temporary duty and separation. Mr. Pope also claims that DAO had intended to separate him in Vietnam and that he had intended to remain in Vietnam after separation. He therefore urges that we base our decision upon what would have occurred had his evacuation not been necessary.

Mr. Pope's reasoning provides no basis upon which we can reverse the result reached by the Transportation and Claims Division. If DAO's sole purpose in transferring Mr. Pope to the United States was to satisfy the notice requirement it would have assigned him to temporary duty lasting 30 days, rather than 60 days. We do not use hypothetical facts when making our decisions, and on the facts presented it is clear that the law requires exclusion of the post differential from the lump-sum payment to Mr. Pope.

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Accordingly, we must sustain the action of our Transportation and Claims Division in disallowing Mr. Pope's claim for the inclusion of the 25 percent post differential in his lump-sum payment for accumulated annual leave.

Acting

  
Comptroller General  
of the United States