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DECISION



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

FILE: B-187596

DATE: December 15, 1976

MATTER OF: Ann R. Rinelli - Change of retirement date and restoration because of administrative error

DIGEST: While long established rule is that once an employee's separation is an accomplished fact its date may not be changed, some exceptions are permitted where separation did not conform to intentions of parties because of bona fide mistake. Therefore, employee who retired optionally after erroneous advice that she had sufficient creditable service to continue life insurance without cost and who would have otherwise delayed retirement may be retroactively restored to rolls in leave without pay status to obtain required creditable service.

By letter dated October 5, 1976, reference 556-05, Ms. Marjorie R. Quandt, Hospital Director, Veterans Administration Hospital, North Chicago, Illinois, requests approval for the cancellation of the retirement of Mrs. Ann R. Rinelli, a former employee of the hospital, and for her restoration to the rolls because the hospital erroneously informed her that she had sufficient creditable service to continue Federal employees group life insurance after retirement without cost, as authorized by 5 U.S.C. 8706(b). This statute provides, in pertinent part, as follows:

"If on the date the insurance would otherwise stop the employee retires on an immediate annuity and - * * * (2) he has completed 12 years of creditable service as determined by the Commission; his life insurance only may be continued, without cost to him, under conditions determined by the Commission. * * *"

From the file it appears that Mrs. Rinelli was born February 11, 1914, and retired optionally on June 4, 1976, under the provisions of 5 U.S.C. 8336(f) which provides that an employee who is separated from the service after becoming 62 years of age and completing 5

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years of civilian service is entitled to an annuity. At the time of her retirement she had been employed by the hospital for 11 years, 6 months, and 18 days. In addition she had previously been employed by the WPA Project Service in Madison, Wisconsin, for a period in excess of 2 years.

Prior to Mrs. Rinelli's retirement, the hospital credited her with this WPA service, established her service computation date on the basis of it, and advised her that she would have the required 12 years of creditable service to continue her life insurance at no cost to her after her retirement on June 4, 1976. Subsequently, however, the Civil Service Commission, by form no. BRI 46-196A, dated August 17, 1976, advised Mrs. Rinelli that she was not eligible to continue her life insurance because only her hospital service of 11 years, 6 months and 18 days was creditable for retirement purposes.

In her letter the hospital director acknowledges that the hospital made a mistake in crediting this WPA service and in counseling Mrs. Rinelli concerning her life insurance entitlement. The director further states that had it not been for this administrative error, Mrs. Rinelli would have delayed her retirement and worked until at least November 17, 1976, to qualify for this benefit.

The long established rule is that once an employee's separation is an accomplished fact, the date of separation may not be changed for the purpose of restoring him or her to the rolls. However, certain exceptions have been permitted where the separation did not conform to the intention of the parties because of a bona fide mistake as to eligibility for an annuity or for a related supplemental benefit such as the continuation of life or health insurance after retirement. In these cases we have permitted individuals to be retroactively restored to the rolls in a leave without pay status for the period necessary to acquire eligibility. See B-131720, May 16, 1957, where restoration was permitted because the employee was erroneously advised that he was eligible for continuation of life insurance after retirement, the identical situation involved in the case at hand. See also B-150356, December 12, 1962; B-43828, October 9, 1964; B-159880, September 1, 1966; and B-168611 February 3, 1970.

In view of the foregoing, this Office will not object to Mrs. Rinelli's being retroactively restored to the rolls and placed

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in a leave without pay status, or in a combination leave without pay and active duty status, for the period necessary to qualify her for the continuation of her life insurance without cost after retirement and the adjustment of her retirement date accordingly, if otherwise proper.

for the

Paul B. Sturtevant
Comptroller General
of the United States