DOCUMENT RESUME

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[Computation of Severance Pay]. B-188533. June 24, 1977. 5 pp.

Decision re: Donald E. Clark; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).
Contact: Office of the General Counsel: Civilian Personnel.
Budget Function: General Government: Central Personnel Management (805).
Organization Concerned: Bureau of Indian Affairs.
Authority: P.L. 89-301. 5 U.S.C. 5595(a)(2)(ii). B-162636 (1967). B-157753 (1968). 50 Comp. Gen. 726. 47 Comp. Gen. 72. 5 C.F.R. 550.707(b). 5 C.F.R. 550.704(b) (2-4). 5 C.F.R. 550, subpart G. F.P.M. Supplement 990-2, Book 550, subpara. S7-5e(2). S. Rept. 89-910.

Gabriela P. Turner, Authorized Certifying Officer, Bureau of Indian Affairs, requested a decision on a claim of former employee for additional severance pay. After involuntary termination by reduction in force, the employee immediately obtained a full-time temporary position with another agency. Severance pay is computed on basic pay at termination, but years of service and age are computed from end of temporary position because full-time temporary appointment has a definite time limitation. The claim was upheld. (Author/DJM)

Mr. Hnubert
Civ.Pers.

02594

DECISION

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

FILE: B-188533 DATE: June 24, 1977

MATTER OF: Donald E. Clark - Computation of severance pay

DIGEST: Upon involuntary separation by reduction in force from permanent position, employee was appointed without break in service to full-time temporary position with another agency. Employee is entitled to have severance pay computed on basis of basic pay at time of separation from permanent position, but years of service and age should be determined as of termination of temporary position because full-time temporary appointment is employment with a definite time limitation within meaning of 5 U.S.C. 5595(a)(2)(ii).

By a letter dated March 2, 1977, Ms. Gabriela P. Turner, an authorized certifying officer of the Bureau of Indian Affairs (BIA), Department of the Interior, has requested a decision concerning the claim of Mr. Donald E. Clark, a former BIA employee, for additional severance pay.

The record indicates that on April 23, 1975, Mr. Clark was involuntarily separated from his position with the BIA due to a reduction in force. At the time of his separation, Mr. Clark occupied a career appointment without limitation as a Tourism Development Specialist. Mr. Clark was immediately appointed on April 24, 1975, to a temporary excepted full-time position as a program director for the American Revolution Bicentennial Administration (ARBA). Although the initial temporary appointment to ARBA was for a period not to exceed October 23, 1975, that appointment was ultimately extended until November 29, 1976, when the position was terminated.

After Mr. Clark's separation from the BIA, he was administratively determined to be entitled to severance pay in the amount of $10,244.84, and he was furnished a notification of personnel action dated May 13, 1975, to that effect. Payment, however, of any portion of that amount was immediately suspended for the duration of Mr. Clark's temporary position with ARBA. Upon the termination of the temporary appointment with ARBA, BIA was notified in order to begin disbursements of severance pay, and Mr. Clark

was notified on December 2, 1976, that his severance pay fund had been adjusted upward to $13,733.28. This recomputation was based upon Mr. Clark's final salary at BIA, $25,451 per annum, but reflected his additional time in service and increased age upon termination from ARBA. The authority for the recomputation was found in subparagraph S7-5e(2) of Book 550, Federal Personnel Manual Supplement 990-2, which provides that although agencies are required to use as an employee's basic pay the pay he was receiving at the time of involuntary separation from the appointment without time limitation, the employee's years of service and age are computed as of the time of the involuntary separation from the time limited appointment.

On December 22, 1976, however, BIA issued a further notification of personnel action cancelling the above recomputation as erroneous and reinstating the May 12, 1975, computation. The finding of error was predicated on the authority in 5 C.F.R. 550.707(b), which provides that when, without a break in service of more than 3 days, an employee who is entitled to severance pay accepts one or more temporary part-time or temporary intermittent appointments, the agency shall suspend the payment of severance pay for the duration of the temporary appointments, and that the period of service covered by the temporary appointments is not creditable for purposes of computing the severance pay. In addition, it was noted that the example in subparagraph S7-5e(2)(ii) of FPM Supplement 990-2 involved a term appointment, whereas Mr. Clark held a temporary excepted appointment. Thus, although the provisions of 5 C.F.R. 550-707(b) are limited to only temporary part time or temporary intermittent appointments, it was administratively concluded that temporary full-time appointments should also be included therein. The BIA, therefore, determined that while an employee on a term appointment could have his service in the limited appointment included in the computation of his severance pay, an employee serving any temporary appointment could not.

Mr. Clark has filed a claim for severance pay in addition to the $10,244.88 amount which the BIA contends is his maximum entitlement. Specifically, Mr. Clark contends that his period of service and age factors should be determined as of the termination of his temporary appointment with ARBA, rather than at the time of his involuntary separation from the BIA. In addition, he claims that the computation of his severance pay fund should

be based on his final salary of GS-13, step 6 ($28,358), at ARBA, rather than his final salary of GS-13, step 6 ($25,451), at the BIA, thus giving him the benefit of two general pay increases. For the below-stated reasons, we hold that Mr. Clark's severance pay should be computed using his basic pay at the time of his involuntary separation from the BIA ($25,451), and his years of service and age at the time of the termination of his temporary position with ARBA.

The basic authority for payment of severance pay to involuntarily separated Federal employees is found at 5 U.S.C. 5595 (1970). Regulations implementing this authority appear at 5 C.F.R. Part 550, Subpart G. However, 5 U.S.C. 5595(a)(2)(ii) specifically excludes from the definition of covered employees:

> "an employee serving under an appointment with a definite time limitation, except one so appointed for full-time employment without a break in service of more than 3 days following service under an appointment without time limitation."

The term "definite time limitation" has not been further defined in either the statute or the implementing regulations. 50 Comp. Gen. 726 (1971). We have, therefore, reviewed the applicable legislative history and note that at page 8 of S. Rept. No. 910, 89th Cong., 1st Sess., which accompanied H.R. 10281, which became Public Law 89-301, it is clearly indicated that the severance pay provisions are applicable to an employee serving under an appointment with a definite time limitation when the employee was appointed thereto "immediately after career service." We have held that this statement continues coverage of the severance pay provisions to an employee who receives a full-time temporary appointment within 3 days from the termination of his permanent employment. B-162646, December 6, 1967. Thus, the fact that an appointment is temporary, as distinguished from permanent or indefinite, satisfies the requirement that the subsequent appointment have a definite time limitation. In this connection we note that a term appointment is but a form of temporary appointment. Thus, no valid distinction may be drawn between "term" or "temporary" appointments for severance pay purposes. Rather, the relevant criteria in ascertaining severance pay coverage under 5 U.S.C. 5595(a)(2)(ii) are whether the appointment is full-time, for a limited duration (temporary), and without a break in service of more than 3 days.

If an employee's coverage is continued under 5 U.S.C. 5595(a)(2), the time for determining the employee's entitlement to severance pay is at the termination of the temporary appointment. B-157753, February 8, 1968. However, if by reason of a break in service or an appointment other than full-time, an employee loses his severance pay coverage, the employee's entitlement is determined at the time of involuntary separation from the permanent position. 47 Comp. Gen. 72 (1965).

With respect to the computation of the severance pay fund, 5 C.F.R. 550.704(b)(4)(ii) provides as follows:

> "* * * If an employee retains entitlement to severance pay under section 5595(a)(2)(ii) of that title, 'basic pay at the rate received immediately before separation' under section 5595(c) of that title is that basic rate received immediately before the termination of the appointment without time limitation."

Noting that the authorizing legislation provides for payment of severance pay under rules and regulations to be promulgated by the President or his designee, we have held this regulation to be a valid exercise of administrative discretion. B-157753, December 20, 1965. However, the regulations governing the total years of creditable civilian service and the age adjustment to be used in computing the severance pay fund do not limit those factors to the date of the involuntary separation from the permanent position. See 5 C.F.R. 550.704(b)(2) and (3). In the absence of valid regulations to the contrary, under the rule of 47 Comp. Gen. 72 (1965), the employee's years of service and age adjustment are to be determined as of the termination of the temporary appointment. Accordingly, where after involuntary separation from an appointment without time limitation, an employee is appointed without a break in service of more than 3 days to a full-time temporary or other time limited position, the employee's coverage under the severance pay provisions is determined upon the termination of the temporary position. Thus, if the employee is found eligible to receive severance pay, the amount of the severance pay fund is computed upon the employee's basic pay at the time of the separation from the appointment without time limitation, but his years of service and age adjustment are computed as of the time

of the involuntary separation from the full-time temporary, or time limited, appointment.

In the present case Mr. Clark was appointed to a full-time temporary (time-limited) position with ARBA without a break in service following his involuntary separation by reduction in force from the BIA. His employment, therefore, falls within the category of persons covered by 5 U.S.C. 5595(a)(2)(ii), thus rendering the provisions of 5 C.F.R. 550.707 inapplicable for the purpose of computing the severance pay fund. Therefore, under 5 C.F.R. 550.704(b)(4)(ii), Mr. Clark's severance pay should be computed using his basic pay at the time of his involuntary separation from the BIA ($25,451). However, under 5 C.F.R. 550.704(b)(2) and (3), his years of creditable civilian service and age adjustment are to be computed as of the time of the termination of his full-time temporary appointment with ARBA.

The voucher may be certified for payment in accordance with the foregoing.

Deputy Comptroller General
of the United States