

7109

DECISION



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

*D. Bloss
- Mr. L... I*

FILE: B-191881

DATE: July 25, 1978

**MATTER OF: Kenneth R. Paswater - Equal Opportunity, Position
Qualifications, and Highest Previous Rate**

DIGEST: Veterans Administration employee was demoted from grade GS-9, step 2, to grade GS-7, step 8. Employee alleges variation in equal opportunity policy; failure to follow qualification regulations; and pay rate set at step 8 rather than step 9. Equal opportunity and qualification determinations are not subject to adjudication in GAO. Rate within the grade was set within agency policy.

We have been asked to review the request of Mr. Kenneth R. Paswater, an employee of the Veterans Administration, that he be reinstated to grade GS-9, step 2, from grade GS-7, step 8, retroactively to July 3, 1977.

It appears that Mr. Paswater was transferred and demoted effective July 3, 1977, from a Veterans Administration Contact Representative position, classification series 962, to a Veterans Administration Claims Examiner position, classification series 996.

Mr. Paswater alleges that a variation in policy exists at his station indicating the possibility of discrimination. The regulations dealing with equal opportunity are set forth in title 5, Code of Federal Regulations, Part 713. No provision is made for this Office to make determinations under such authority. Therefore, we may not consider this aspect of Mr. Paswater's case.

The second aspect of the case is the question as to the extent that work experience in a classification series 962 position qualifies one for placement in a position in classification series 996. Mr. Paswater states that his local personnel officer is not complying with a Civil Service Commission letter of April 12, 1977, discussing the application of the qualification standards for General Schedule positions--CSC Handbook X-118. Mr. Paswater asks that our Office get the agency Personnel Office to conform with the Commission regulations. The determination of

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personnel qualifications is primarily the responsibility and function of the agency and the Civil Service Commission. Our Office is without authority to adjudicate such determinations. See chapter 33--Examination, Selection, and Placement--title 5 of the United States Code, and related sections of the Federal Personnel Manual.

A third aspect of Mr. Paswater's request requires a determination as to whether his pay rate within grade GS-7 was set properly at step rate 8 rather than step rate 9.

The establishment of an employee's rate of pay upon change of position or type of appointment is governed by regulations issued by the Civil Service Commission pursuant to section 5334 of title 5, United States Code (1970), and published in the Code of Federal Regulations (C.F.R.), title 5, section 531.203. These regulations state in pertinent part that "when an employee is reemployed, transferred, reassigned, promoted, or demoted, the agency may pay him at any rate of his grade which does not exceed his highest previous rate; however, if his highest previous rate falls between two rates of his grade, the agency may pay him at the higher rate." 5 C.F.R. § 531.203(c) (1977). (Emphasis added.) We have consistently viewed this regulation as vesting discretion in the agency regarding application of the so-called "highest previous rate rule" in the establishment of an employee's rate of pay. See B-177195, December 14, 1972; B-175349, April 27, 1972; B-175349, April 21, 1972. Consequently, each agency is permitted to formulate its own policy regarding application of the rule.

Veterans Administration Personnel Policy Manual--MP-5--states in pertinent part in paragraph 3, Part I, chapter 531, section B, that initial salary rates will be set at the highest levels permitted unless otherwise provided. The policy is referred to as the "Earned Rate Rule." In subparagraph 4d, under a criteria heading for application of the rule, it is stated that the earned rate rule will be controlling only where the record indicates, in the authorizing official's judgment, that the experience gained in the position on which the rate is proposed to be based was of such quality and duration that the individual's total qualifications were likely thereby to have been enhanced. The criteria also provide that where an affirmative determination

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cannot be made for application of the earned rate rule, a salary rate shall be selected at any lower level within the grade, not below the minimum required by law or regulation. The record before us indicates that Mr. Paswater's salary was set at the eighth step of grade GS-7 under the foregoing provision after it was determined that he was not entitled to the earned rate. Therefore, we must conclude that the rate was set within the agency regulations.

Handwritten signature in black ink, appearing to read "R. J. K...".
Deputy Comptroller General,
of the United States