

PLM II  
A. Riedinger

GA000412

**DECISION**



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

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FILE: B-192890

DATE: January 10, 1979

MATTER OF: Mr. Edward F. Slibowski

*Request for Review of Disallowed Claim for Retroactive Salary Adjustment*

DIGEST: The entitlement of a general schedule employee upon transfer to receive pay in his new position based on his highest previous rate is discretionary with the agency (5 C. F. R. 531.203(c)) and subject to agency regulations. *Applicable regulations* required a minimum of 90 days service in an unlimited position in order for *an* employee to receive *the* full benefit of that grade and step as his highest previous rate for *the* purpose of establishing his new rate on downgrading. Where an employee had not served 90 days in the higher grade, but was erroneously given full benefits *under the highest previous rate rule,* *an* action administratively taken to correct *the* error and adjust employee's rate of pay from step 10 to step 9 of grade GS-9, was proper. *Subject to the Army Order Personnel Regulation*

This action is in response to a letter dated June 13, 1978, from Mr. Edward F. Slibowski, requesting a review of his claim for retroactive salary adjustment which was disallowed by our Claims Division settlement dated March 18, 1976.

Mr. Slibowski questions the determination made with respect to his transfer of April 2, 1967, to Sharpe Army Depot, Lathrop, California, in connection with which he accepted a change from grade GS-11, step 4, to the position of Production Controller (Automotive) GS-9, step 10. He does not believe the action to correct that transfer by changing step 10 to step 9, was correct.

His claim for additional pay as a transferred General Schedule employee was disallowed on the basis that when a General Schedule employee moves into a position by any means other than a new appointment, he may be paid at any rate not exceeding his highest previous rate computed based on a regular tour of duty under an appointment not limited to 90 days, or for a continuous period of not less than 90 days. Since he had not served in the GS-11, step 4, position for a minimum of 90 days, it was concluded that he was not entitled to have his new pay established based on that higher rate.

Section 5334 of title 5, United States Code (Supp. III, 1967) provided that the Civil Service Commission shall provide

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regulations governing the rate of pay to which an employee is entitled upon transfer, appointment, reappointment, reemployment or reinstatement. Those regulations are found in title 5, Code of Federal Regulations.

The term "new appointment" is defined in these regulations (5 C.F.R. 531.202) to mean "the first appointment, regardless of tenure, as an employee of the Federal Government \* \* \*." In this regard, those regulations also provide in part that a "new appointment" is to be made at the minimum rate of the grade in which the individual is employed. (5 C.F.R. 531.203(a)) (1967 ed.). When Mr. Slibowski accepted employment at Sharpe Army Depot, such employment was not a new appointment as that term is used in the regulations, since he was already employed by the Government at the time of his acceptance of the position at that location.

Other provisions of those regulations state that when an employee is transferred, the department, under regulations to be prescribed by them, 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 the rate of his new grade, the department may pay him at the higher rate. (5 C.F.R. 531.203(c) (1967 ed.)).

Civil Service Regulations at 5 C.F.R. 531.203(d)(1) permit the use of a rate of pay received when the employee's appointment is not limited to 90 days or less regardless of the length of time the position was occupied. However, under authority granted by the Commission the Department of the Army has prescribed a more restrictive rule.

Departmental regulations governing these matters are contained in Department of the Army Civilian Personnel Regulations (CPR) P3.2. Paragraph 2-6 of those regulations entitled "CHANGE TO LOWER GRADE OF EMPLOYEES INELIGIBLE FOR SALARY RETENTION BENEFITS," provides in subparagraph c thereof:

"c. When an employee is being assigned to a lower grade before he has served 90 days under unlimited promotion in his present grade, his pay may be fixed at any step rate of the new grade which does not exceed--

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"(1) the step rate immediately above the rate he would have received had he been assigned to the lower grade as of the date he was assigned to his present grade \* \* \*."

The record shows that the employee's promotion from grade GS-10, step 4, to grade GS-11, step 4, was an unlimited promotion and that he served in the higher grade for less than 90 days prior to his transfer (March 26, 1967 to April 2, 1967). Thus, for the purpose of establishing the proper rate of pay in the lower grade accepted on transfer the before-quoted provision must be applied. Since the employee had been a grade GS-10, step 4, the rate of pay to be used in establishing the proper step rate of grade GS-9, would be the rate applicable to grade GS-10, step 4. However, in view of the promotion to grade GS-11, step 4, he was entitled to an additional step in the position to which demoted. The General Schedule rates in effect at the time in question for grade GS-10, step 4, was \$9,285. If demoted from that salary rate he would have been entitled to pay at grade GS-9, step 8, \$9,523 since step 7 of that grade (\$9,262) was paid at a lower rate than the rate applicable to grade GS-10, step 4. Following the mandatory rule set forth in CPR P3.2 as quoted above the maximum authorized rate was that applicable to the next higher step, grade GS-9, step 9. Therefore, when the employee accepted the grade GS-9, the maximum step of that grade which he could receive was the pay rate of step 9.

Therefore, the action administratively taken to adjust the employee's rate of pay from step 10 to step 9 of grade GS-9 was required by the governing Department of the Army regulation. On review, the action taken by our Claims Division disallowing the claim is correct and sustained.

  
Deputy Comptroller General  
of the United States