

DECISION



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

10,838

FILE: B-195032

DATE: July 25, 1979

MATTER OF: Mrs. Virginia A. Rawlings - Highest previous rate on reemployment

DIGEST: Salary of employee, who had been paid at grade GS-4 prior to resignation, was set at GS-3, step 1 on reemployment. (The evidence presented does not establish that the personnel officer erred in applying the lower rate at the time of reemployment in accordance with the broad discretion given him in the applicable regulations. Accordingly, ^{the} claim for retroactive adjustment of compensation must be denied, *as the claim is denied the claim was sustained.*

Claim for

This action is the result of an appeal from a settlement of our Claims Division dated October 12, 1978, which disallowed the claim of Mrs. Virginia A. Rawlings. Mrs. Rawlings ~~is claiming an increase in salary retroactive to her reemployment in 1965 with the Department of the Army following a break in service of 3-1/2 years.~~

We agree with the conclusion reached by the Claims Division for the following reasons.

Mrs. Rawlings resigned from her position as a GS-4, with the Department of the Army on August 18, 1961. On January 25, 1965, she received a temporary appointment as a GS-2, with the Internal Revenue Service. She resigned from that position on September 16, 1965, and was reemployed by the Department of the Army on September 17, 1965, as a GS-3, step 1. (Since she had been a GS-4 at the time of her resignation, ~~on August 18, 1961, it is Mrs. Rawlings' contention that upon reemployment as a GS-3 she was entitled to be placed at a higher step in the GS-3 grade.~~ *changed*)

~~The Army and our Claims Division denied her claim on the basis that at the time of her reemployment it was the policy of the activity where she was employed to place individuals in the first step of the grade in which employed, even in the case of an individual who had been previously employed at a higher rate.)~~ *was she*

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The pertinent Army regulation, Civilian Personnel Regulation, CPR p. 3.1, para. 1-2c, July 8, 1963, provided as follows:

"c. When necessary to obtain desired services or when otherwise determined to be in the best interests of the Department of the Army, appointing officers may fix the salary of an employee, who has previously served at a rate above his last earned rate, at any step rate of the grade to which assigned which is not in excess of his highest previous rate (pars. 1-4b and 1-8). Generally, the grade in which such higher former rate was earned should have been held for a sufficient period of time to represent an actual earning level. Prior to utilizing such higher former rate, the appointing officer must make a determination that the employee's qualifications and known or presumed proficiency justify the proposed rate. In addition, there must be a determination that such action would not serve to place the employee on a basis substantially different from other employees of equal or superior proficiency serving in similar or identical positions."

Statements in the record indicate that at the time of Mrs. Rawlings' reemployment a determination was made by the appointing officer on the basis of her employment with the Internal Revenue Service that she was qualified only for the entry level in the grade in which she was hired. Subsequently at the time of her promotion to GS-4 consideration was also given to whether she would qualify for a higher level. However, it was determined that she should only receive a normal promotion increase.

In cases involving the highest previous rate of compensation the statutory authority for establishing basic pay rates is 5 U.S.C. 5334. This provision authorizes the establishment of basic pay rates to be accomplished in accordance with regulations promulgated by the Civil

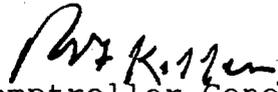
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Service Commission (now Office of Personnel Management). Those regulations in turn grant discretionary authority to the various agencies to apply the highest previous rate so that an individual upon reemployment may be paid above the minimum rate of the grade to which appointed based on prior employment at a higher rate.

The departmental regulations state that a determination to apply the highest previous rate will be made by the personnel officer involved. On the evidence presented to us, we cannot conclude that the appointing officer erred in 1965 in establishing Mrs. Rawlings' rate of compensation at GS-3, step 1, in accordance with the discretionary provisions in the Army regulations in effect at that time.

The fact that other individuals received the benefit of the highest previous rate rule when reemployed some years after Mrs. Rawlings was reemployed has no bearing on her claim since the regulations in force provided discretionary authority to the employing agency to apply that rule based on a variety of circumstances existing at the time of reemployment.

Accordingly, the action of our Claims Division in denying the claim must be sustained.


Deputy Comptroller General
of the United States