

PLM-II

DECISION



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

~~10,837~~
10,842

FILE: B-194726

DATE: July 24, 1979

MATTER OF: Marie Barna

DIGEST: When an employee of a Federal agency transferred to a position in a Veterans Administration (VA) facility, her compensation was set at a step of the grade lower than previously held. Use of highest previous rate rule by an agency in setting a pay rate on transfer is discretionary. Where VA regulations governing employee compensation provide that use of rule is inapplicable if higher rate was earned in non-VA positions, the employee is not entitled to have the rate used in setting her new pay rate.

ACC 00016

This action is in response to a letter from Ms. Marie Barna, an employee of the Veterans Administration (VA), requesting a review of a settlement by our Claims Division dated December 19, 1978, which disallowed her [claim for retroactive step increase and backpay]

The file in Ms. Barna's case shows that she was employed by the VA from November 1950 until September 1956. She thereafter was employed by the Internal Revenue Service (IRS) and attained grade GS-5, step 9. In February 1974, she was reemployed by the Veterans Administration Hospital, Cleveland, Ohio, as a Payroll Clerk, and was authorized to receive compensation at the grade GS-5, step 4 level.

ACC 00004

Section 5334 of title 5, United States Code, authorizes that Civil Service Commission (now Office of Personnel Management) to provide regulations governing the rate of pay that an employee may receive upon transfer, appointment, reappointment, reemployment or reinstatement. Those regulations are found in title 5, Code of Federal Regulations. Subparagraph 531.203(c) of those regulations states that when an employee is reemployed, that agency, under regulations prescribed by them, may pay the employee at any rate of his grade which does not exceed his highest previous rate.

ACC 00013

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Those regulations do not require agencies to use the highest previous rate when setting the pay rate of a reemployed or transferred employee nor use a pay rate that even approximates that higher rate. It merely establishes a ceiling as to the permissible rate payable by the agency and authorizes the agency to regulate further.

Departmental regulations governing rates of compensation for employees of the VA are contained in the Veterans Administration Personnel Policy Manual. Part I, chapter 531, Section B, thereof, entitled "Determining Rate of Basic Compensation", provides in subparagraph 4e(7):

VA - - - ch. 531, §B

"(7) Transfers. Consistent with the limitations of non-VA service, set forth in subparagraph c above, the earned rate rule will not routinely be applied in effecting transfer from another agency * * *. Rather, the rate to be selected within the grade shall be that which in the authorizing officer's judgment best represents equity to the employee * * *. The highest previous rate, if otherwise appropriate in the judgment of the authorizing official, shall be selected only if * * * it * * * meets the * * * criteria specified in subparagraph d above."

Subparagraph 4c referred to, provides that for the purpose of establishing the appropriate rate of pay for the grade employed, the highest previous rate rule "shall apply only to rates received in General Schedule positions held in VA on or after October 15, 1963 * * *." That provision authorizes, however, that salary rates in non-VA positions may be taken into account if in the judgment of the authorizing officer it is appropriate to do so, "but no right is vested in the employee to receive a rate based on such criteria".

Subparagraph 4d provides in part:

"d. Criteria for Application of Earned Rate Rule. The earned rate rule /highest previous rate/ 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

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duration that the individual's total qualifications were likely thereby to have been enhanced. * * *

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"(3) Where an affirmative determination cannot be made for application of earned rate rule * * * a salary rate shall be selected at any lower level within the grade * * *. The rate selected * * * shall be that which in the authorizing official's judgment best represents equity to the employee and the VA * * *."

Thus, under the regulations, since Ms. Barna's only Federal employment after 1963 was not with the VA, she was not entitled as a matter of right to use that salary rate for highest previous rate purposes upon reemployment with or transfer to the Veterans Administration Hospital from IRS. The file, however, does indicate that in compliance with the last part of subparagraph 4c and the criteria listed in subparagraph 4d, the non-VA experience she had was taken into account when she was employed by the VA in 1974 and her step rate was set.

So long as agency regulations as written are consistent with the law and complied with by the appropriate administrative officials, there is no legal basis upon which this Office may challenge actions administratively taken thereunder.

Accordingly, the action taken by our Claims Division disallowing the claim, is sustained.


Deputy Comptroller General
of the United States