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DECISION



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

FILE: B-180962

DATE: August 13, 1979

MATTER OF: Canal Zone Employees - ^{Entitlement to} Hazardous Duty Pay ^{for}

DIGEST: Canal Zone leprosarium employees claim hazardous duty pay. Statutes providing such pay for Public Health Service employees (42 U.S.C. § 210(e)) and military personnel (37 U.S.C. § 301(a)(7)) do not apply to Canal Zone employees. Furthermore, such additional pay is not part of basic pay to be considered under wage fixing authority of Canal Zone Government under 2 C.Z.C. § 144.

This decision is in response to the request of Walter D. BJORSETH, Financial Vice-President, Panama Canal Company, for our review of a decision by the Canal Zone Government denying the claims of 33 employees of the Palo Seco leprosarium for hazardous duty pay. The Panama Canal Company has forwarded this request since it performs a claims review function for the Canal Zone Government.

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The issue presented for our decision is whether these Canal Zone employees are entitled to additional pay comparable to the hazardous duty pay afforded to employees of the Public Health Service and members of the uniformed services who perform substantially identical work.

BACKGROUND

In 1972 these 33 employees filed a claim with our Claims Division for hazardous duty pay, and this claim was denied by our Claims Division in 1973. The claimants appealed the denial and, by decision B-180962, May 14, 1975, we vacated the Claims Division settlement on the basis that the claimants had not exercised their rights under either agency grievance or position classification appeal procedures. We referred these claims to the Canal Zone Government for its determination, and we suggested that the claimants could appeal an adverse decision to our Office for review. The Canal Zone Government subsequently denied these claims, and the claimants requested our review of this determination.

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The claimants argue that the denial of hazardous duty pay discriminates against Canal Zone employees since employees of the Public Health Service and members of the uniformed services receive hazardous duty pay for substantially identical work. The Canal Zone Government responds that there is express statutory authority for the payment of hazardous duty pay to Public Health Service employees (42 U.S.C. § 210(e)) and military personnel (37 U.S.C. § 301(a)(7)) and that in the absence of such statutory authority such additional pay cannot be authorized for Canal Zone employees.

The claimants also argue that the provisions contained in 2 C.Z.C. § 144 and 35 C.F.R. § 253.131 requires the Canal Zone Government to establish rates of basic compensation comparable to that paid for the same or similar work in the United States, including hazardous duty pay. However, the Canal Zone Government considers hazardous duty pay as added or premium pay which is not considered part of a basic salary rate under section 144. In addition, the Canal Zone Government argues that it has discretion under the law and regulations to fix pay in relation to salaries established in the United States and that such action will be upheld unless arbitrary and capricious.

DISCUSSION

The authority for the payment of hazardous duty pay to Public Health Service employees is contained in 42 U.S.C. § 210(e) which provides as follows:

"Additional pay for leprosy detail

"(e) Whenever any noncommissioned officer or other employee of the Service is assigned for duty which the Surgeon General finds requires intimate contact with persons afflicted with leprosy, he may be entitled to receive, as provided by regulations of the President, in addition to any pay or compensation to which he may otherwise be entitled, not more than one-half of such pay or compensation."

For members of the uniformed service, 37 U.S.C. § 301 provides as follows:

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"§ 301. Incentive pay: hazardous duty

"(a) Subject to regulations prescribed by the President, a member of a uniformed service who is entitled to basic pay is also entitled to incentive pay, in the amount set forth in subsection (b) or (c) of this section, for the performance of hazardous duty required by orders. For the purposes of this subsection, 'hazardous duty' means duty--

* * * * *

"(7) involving intimate contact with persons afflicted with leprosy * * *."

However, we are aware of no similar statute which would apply to Canal Zone employees employed at the Palo Seco leprosarium.

The claimants argue that the Canal Zone Government, in setting a rate of basic compensation, should include the hazardous duty pay received by Public Health Service employees or military personnel in comparing rates of compensation. In this regard we note that the authority to set compensation for Canal Zone employees is contained in 2 C.Z.C. § 144 which provides, in subsection b, as follows:

"The rates of basic compensation may be established and revised in relation to the rates of compensation for the same or similar work performed in the continental United States or in such areas outside the continental United States as may be designated in the regulations referred to in section 155(a) of this title."

In addition section 146 authorizes United States citizens to be paid an allowance for taxes and an overseas (tropical) differential, but such basic compensation and allowances or differentials may not exceed by more than 25 percent the rate of basic compensation for the same work performed in the United States. See 2 C.Z.C. §§ 101(b), 144(d).

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As we stated in our prior decision B-180962, May 14, 1975, supra, the language of section 144 is permissive with respect to comparability to similarly situated employees within the continental United States. However, the implementing regulations contained in 35 C.F.R. § 253.131 make it mandatory that the base rates of pay for certain Canal Zone positions be established in relation to the rates paid for similar positions in the United States. See Reinheimer v. Panama Canal Co., 413 F.2d 153 (5th Cir. 1969).

As the Canal Zone Government has pointed out, section 144 and the implementing regulation are concerned with the establishment of basic compensation for Canal Zone employees. Furthermore, the hazardous duty pay provided by statute to Public Health Service employees or military personnel constitutes additional pay, not part of their basic compensation for the purposes of determining rates of compensation for Canal Zone employees. Therefore, the rates of compensation for Canal Zone employees cannot be adjusted so as to include hazardous duty pay for contact with lepers. In view of the above and since we are not aware of any statute authorizing such additional pay as hazardous duty pay for Canal Zone employees, we must sustain the disallowance of these claims.


Acting Comptroller General
of the United States