

DECISION

15242 PLNH
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-197983

DATE: October 21, 1980

MATTER OF: *Entitlement to* John A. Thompson - Grade and Pay Retention

DIGEST: Employee who held a GS-12 position with the Department of the Army was notified of a reduction in force (RIF) due to an installation closing. Later he accepted another position in lieu of the RIF at the same grade at same installation. On his belief that position would also be abolished employee sought and accepted a position at a reduced grade with the Department of Energy. Employee is not entitled to grade and pay retention under 5 U.S.C. § 5362 (Supp. II, 1978) since he was not placed in lower grade position as result of RIF procedures but voluntarily accepted the downgraded position.

The issue presented in this case is whether an employee is entitled to grade and pay retention under 5 U.S.C. § 5362 (Supp. II, 1978) where the employee had been given a reduction-in-force (RIF) notice due to the closing of an installation, later accepted a position at the same installation in lieu of the RIF at the same grade to assist in the site inactivation, and later applied for and accepted a downgraded position with another agency. Since the employee was not subject to a RIF notice at the time he accepted the downgraded position he is not entitled to grade and pay retention.

Mr. John A. Thompson, an Engineer Technician, GS-12, employed by the Department of the Army, Corps of Engineers, received notice dated February 10, 1976, that the installation where he was employed, Stanley R. Mickelsen Safeguard Complex, Nekoma, North Dakota, would be phased out and closed by October 1, 1976. That notice indicated that a small activity would be established to continue the mission of the PAR Surveillance Division after October 1, 1976. On June 14, 1976, he received a RIF notice stating that due to the phase down of the installation, his position had been abolished. On June 28, 1976, he was offered a position with the retained Surveillance Division in lieu of the RIF. That position was in the same grade and pay that he presently held and was accepted by Mr. Thompson on July 1, 1976. On April 9, 1977,

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Mr. Thompson voluntarily accepted a position with the Department of Energy, Oak Ridge, Tennessee, as a GS-11. At that time he was not subject to any RIF notice. His application for grade and pay retention filed on September 6, 1979, under the Civil Service Reform Act of 1978, was denied by the Department of Energy upon the basis that he had taken a voluntary reduction in grade at his own request on April 10, 1977, and not as the result of any RIF action. The Department of Energy denial of his claim was sustained in a settlement from our Claims Division on December 26, 1979.

Upon appeal Mr. Thompson claims that the Army position he accepted on July 1, 1976, was not in lieu of RIF but represented an extension of his prior tour of duty for the purpose of assisting in the site inactivation. He points out that he sought and accepted the Department of Energy position in the face of the RIF he considered to be inevitable in view of the impending closure of the Safeguard site.

Title VIII of the Civil Service Reform Act of 1978 amends title 5 of the United States Code to provide grade and pay retention for certain Federal employees who have been subject to reductions in grade as a result of grade reclassification actions or reductions in force. A qualifying employee who is reduced in grade as the result of a RIF is entitled to retain his grade for 2 years and to retain his pay indefinitely thereafter, unless his entitlement ceases under prescribed conditions. These provisions apply retroactively to certain employees whose demotions occurred on or after January 1, 1977, and prior to the first pay period beginning on or after January 1, 1979, under circumstances which would have entitled the employee to grade retention under 5 U.S.C. § 5362 (Supp. II, 1978). Richard J. Magner, B-195924, March 14, 1980, 59 Comp. Gen. ____.

Prior to the passage of the Civil Service Reform Act of 1978, an employee who was reduced in grade as the result of a RIF was not entitled to saved pay if the RIF was due to lack of funds or curtailment of work. Thus, employees who were subject to a RIF due to a base or installation closing were determined to be ineligible to receive the saved pay benefits under 5 U.S.C. § 1107(a) (1976). B-187221, June 21, 1977. It

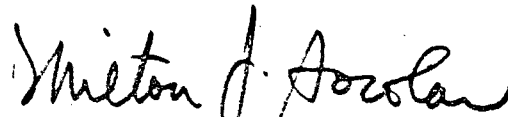
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was this type of problem facing Federal employees that the grade and pay retention provisions of the Civil Service Reform Act of 1978 sought to correct. In House Report No. 95-1403, July 31, 1978, concerning the grade and pay retention provisions of Public Law 95-454, it is stated at page 18:

"Over the past several years the downgrading of Federal employees for reasons beyond their control has become one of the most pressing problems facing the Government's civilian work force. Downgradings occur when positions are recognized as being overgraded because of erroneous classifications or when, as a result of staff reductions, mission changes, consolidation of functions, or reorganizations, a reduction-in-force action results in employees being placed in lower grades."

Mr. Thompson was not placed in a lower-grade position as a result of RIF procedures and, in fact, he was not subject to a RIF notice at the time he accepted the downgraded position at the Department of Energy. While he may have been justified in believing that his position with the PAR Surveillance Division eventually would be abolished, his acceptance of that position on July 1, 1976, was clearly stated to be in lieu of the RIF notice previously given. Under these circumstances, his acceptance of the downgraded position with the Department of Energy in April 1977 is to be regarded as the result of his personal request. He, therefore, does not come within the retroactive provisions of Title VIII, Public Law 95-454. See Louis Rubenstein, B-198941, August 18, 1980.

Accordingly, Mr. Thompson is not entitled to grade and pay retention under 5 U.S.C. § 5362 and the action of the Claims Division disallowing his claim is sustained.



For the Comptroller General
of the United States