

DECISION

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

FILE: B-200548**DATE:** August 12, 1981**MATTER OF:** Willis E. Staymates - Lump-Sum Leave -
Rate Payable

DIGEST: Employee, grade GS-13, step 9, retired from his position, and then was rehired as a part-time reemployed annuitant at GS-12, step 10, before the expiration of period covered by his lump-sum annual leave payment. Employee is entitled to be paid for lump-sum annual leave at rate for GS-13, step 9, for period between retirement and reemployment. After separation from the GS-12 position he is entitled to receive a lump-sum annual leave payment only at the rate for GS-12, step 10.

Mr. Willis E. Staymates appeals the settlement of our Claims Group disallowing his request to be paid for his lump-sum annual leave at the rate of grade GS-13, step 9, instead of the rate of grade GS-12, step 10. For the reasons stated below, we affirm the disallowance of this claim.

The pertinent facts are as follows. Mr. Staymates, a former employee of the Department of the Army, Harry Diamond Laboratories, retired from his Supervisory Engineering Technician position, grade GS-13, step 9, on September 7, 1979. He was then reemployed in a part-time position, effective September 14, 1979, as a reemployed annuitant, Engineering Technician, grade GS-12, step 10. He was given a lump-sum payment for annual leave for September 10-13, 1979, at the grade GS-13, step 9 rate. On January 4, 1980, his part-time position terminated and he was given a lump-sum annual leave payment for his then remaining annual leave at the grade GS-12, step 10 rate.

Mr. Staymates argues that both of his lump-sum payments should have been at the grade GS-13, step 9 rate. His argument is based on the allegation that he was not counselled by the Department of the Army, prior to his retirement on September 7, 1979, and his reemployment on September 14, 1979,

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that he would receive his lump-sum payment only at the grade GS-12, step 10 rate if he chose to re-enter the Federal service at that level. He also contends that the right to a lump-sum annual leave payment vests on the date of separation and that he was separated from service on September 7, 1979, when his grade was GS-13, step 9, so that his lump-sum payment should be made at that rate.

The Civilian Personnel Office of the Department of the Army states that the Industrial Engineering Laboratory, where Mr. Staymates worked, was informed before Mr. Staymates retired that his lump-sum payment would be at the GS-12 grade level if he was rehired at that grade. They also state that the laboratory was informed that if Mr. Staymates was reemployed as an intermittent employee after retirement, he would receive a lump-sum annual leave payment in September 1979 at the GS-13, step 9 level for all his accumulated annual leave. However, the Civilian Personnel Office contends that Mr. Staymates wanted to receive his lump-sum payment in 1980 for tax purposes.

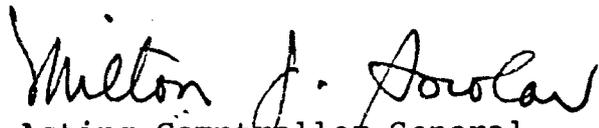
Whether the Industrial Engineering Laboratory conveyed all this information to Mr. Staymates at the time alleged is disputed. As stated above, Mr. Staymates does not deny being counselled, but he contends that it occurred after his reemployment began. Additionally, he does not deny that he wanted to receive his lump-sum payment in 1980 instead of 1979. However, even if Mr. Staymates was incorrectly or untimely counselled, this does not give him the right to receive his lump-sum annual leave payment at a higher rate than the rate of the grade to which he was appointed at the time of his final separation.

Federal Personnel Manual Supplement (FPM Supp.) 990-2, Book 630, S5-1.b, and 5 U.S.C. § 6306 state that upon separation from the Federal service an employee shall receive a lump-sum payment for all his unused annual leave but that he must make a proportionate refund and receive a recredit of leave if he is reemployed within the period covered by the lump-sum payment. Therefore, Mr. Staymates was entitled to receive the lump-sum payment on September 7,

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1979, but would have been required to return the proportionate amount on September 14, 1979. His agency instead chose to pay him the net lump-sum payment due, that is the amount due for the 4 days between his retirement and reemployment. Thus, although the right to a lump-sum payment vests at the time of separation, reemployment within the period covered by the leave limits the amount of the lump-sum payment that the employee may retain, and terminates any vesting of rights to a lump-sum payment that may have occurred at separation. It is also true, however, that if Mr. Staymates had been reemployed as an intermittent employee the FPM Supp. 990-2, Book 550, S2-2.a(2)(b) states that he would be entitled to a full lump-sum payment on September 7, 1979. However, he was reemployed as a part-time employee with a regularly scheduled workweek, and, therefore, he did not have the right to receive the full lump-sum payment on September 7, 1979. When he was separated from the service on January 4, 1980, his agency correctly paid him for his then remaining annual leave at the grade level to which he was then appointed, grade GS-12, step 10. See 5 U.S.C. § 5551 (1976).

Accordingly, our Claims Group settlement is sustained.


Acting Comptroller General
of the United States