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**DECISION**



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

**FILE:** B-202863

**DATE:** January 8, 1982

**MATTER OF:** Bobby M. Siler - Retroactive Pay  
Adjustment - Highest Previous Rate

**DIGEST:** Employee who had previous service with Postal Service, was appointed to position of Document Control Clerk with the Internal Revenue Service (IRS) at GS-3, step 1. He is entitled to retroactive adjustment to rate of pay within GS-3 equal to rate of GS-4, step 1. IRS regulations direct appointing officer to set employee's rate of pay based on his previous service and employment qualifications and IRS has stated employee's prior service at Postal Service qualified him for the GS-4 level in his new position.

This is in response to a request from Bobby M. Siler for reconsideration of the settlement of August 28, 1980, Z-2822118, by our Claims Group denying his claim for a retroactive adjustment of his rate of pay.

Mr. Siler is an employee of the Internal Revenue Service Data Center in Detroit, Michigan. He was appointed on October 1, 1979, to the position of Document Control Clerk, GS-3, step 1 at an annual salary of \$8,366. Mr. Siler had been previously employed by the U. S. Postal Service from July 6, 1974, to July 19, 1976. At the time of his resignation from the Postal Service he was a Distribution Clerk, PS-5, step 3, at an annual salary of \$12,459.20. The IRS reports that his Postal Service salary was equivalent to a GS-8, step 2, in the General Schedule.

In light of his employment with the Postal Service and his military service, Mr. Siler claims that the Internal Revenue Service should have appointed him to the GS-4 level of the Document Control Clerk position or set his pay at a higher rate in the GS-3 grade. We agree with Mr. Siler that his pay should have been set at a higher rate in GS-3 for the following reasons.

Under the provisions of 5 U.S.C. § 5334(a) (1976) and 5 C.F.R. § 531.203(c) (1979), when an employee is reemployed, transferred, reassigned, promoted, or demoted, the agency may pay him at any rate of his grade which does not exceed his highest previous rate. See Ralph G. Nail, 59 Comp. Gen. 209, 211 (1980). The application of this rule is discretionary with the agency, and each agency is permitted to formulate its own policy regarding application of the rule. 50 Comp. Gen. 414, 417 (1970).

The IRS regulations on this subject provide that an employee will be appointed at his highest previous rate, except in certain situations. Internal Revenue Manual, section 0531.32(2). One exception is where the appointment is to the same or lower grade and the employee's prior service is not directly applicable to the reemployed position. In these circumstances section 0531.32(2) of the Internal Revenue Manual directs the appointing officer to determine an appropriate salary according to section 0531.32(3), which provides in pertinent part:

"(3) Same or Lower Grade Exception -  
When an employee is reemployed under an appointment not limited in tenure, at the same or lower grade than the position he or she last held in the Federal Service and the employee's prior service is not directly applicable to the reemployed position, the employee will be assigned that rate of pay which represents the appointing officer's determination of the appropriate salary based on the employee's previous service and employment qualifications. \* \* \*"

The IRS states that it assigned Mr. Siler to GS-3, step 1, after determining that the duties of a Distribution Clerk in the Postal Service were not directly applicable to the IRS position of Document Control Clerk. However, the IRS also states that Mr. Siler's prior experience and education indicate that he was eligible for the position of Document Control Clerk at the GS-4 level. The IRS explains that, since the Document Control Clerk position is specialized, Mr. Siler was offered the position at the GS-3 level to

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enable him to gain the necessary background to perform at the full working level of GS-4.

Section 0531.32(3) of the Internal Revenue Manual, quoted above, directs the appointing officer to set the employee's rate of pay, that is the step within the grade, on the basis of his previous service and employment qualifications. The IRS states that Mr. Siler's prior experience and education qualified him for appointment at the GS-4 level. Since the IRS determined that Mr. Siler was qualified for the higher grade based on his experience and education, and since section 0531.32(3) limits the appointing officer to an examination of the employee's "previous service and employment qualifications," we believe that Mr. Siler is entitled to a retroactive adjustment of his initial compensation upon appointment with the IRS. Accordingly, Mr. Siler's initial compensation should be retroactively set at a step in GS-3 equal to GS-4, step 1.

*Nancy R. Ann Cleve*  
For the Comptroller General  
of the United States