

DECISION

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

FILE: B-205372

DATE: July 23, 1982

MATTER OF: Donna Fonville - Pay-setting incident to promotion - Prevailing rate employee

DIGEST: Employee of Defense Mapping Agency is entitled to increased compensation in the form of an additional step rate of her applicable wage schedule because the agency's policy of rounding down fractions of less than one-half of one cent produced a raise in pay incident to her promotion of less than 4 percent, which was not in accordance with regulatory pay-setting requirements. Under 5 C.F.R. § 532.407, pay raise at time of promotion for prevailing rate employee is required to be at least 4 percent.

In this decision we determine that Ms. Donna Fonville, an employee of the Defense Mapping Agency Aerospace Center (DMAAC), is entitled to increased compensation in the form of an additional step within her wage schedule. This determination follows from a finding that the agency's policy of rounding down fractions of less than one-half of 1 cent produced a raise in pay for Ms. Fonville at the time of her promotion of less than 4 percent in contravention of controlling personnel regulations.

STATEMENT OF THE CLAIM

On January 25, 1981, Ms. Fonville was promoted from the position of Painter Helper, WG-4102-05, Step 2 (\$8.12 per hour) to the position of Painter Worker, WG-4102-07, Step 1 (\$8.44 per hour). In setting Ms. Fonville's new rate of pay incident to her promotion, the DMAAC Personnel Office reported that it followed the provisions of section 58-3d(1) of Federal Personnel Manual Supplement (FPM Supp.) 532-1 (Inst. 17, April 14, 1980), which states that, upon promotion, an employee is entitled to be paid at the lowest scheduled rate of the grade to which promoted which exceeds his or her existing scheduled rate of pay by at least 4 percent of the representative rate of the grade from which promoted.

The agency's computation of Ms. Fonville's promotional pay increase was reported as follows in the memorandum dated April 30, 1981, denying her formal grievance:

"* * * Your representative rate was \$8.12 per hour (WG-5, Step 2). Four percent of that rate equated to \$0.3248 per hour. Following common practice which is past practice at this Center, the 0.48 of a cent was dropped in rounding to the nearest whole cent (0.48 being less than one-half cent) and you were thus entitled to a \$0.32 per hour increase upon promotion. The rate constructed using the above process was \$8.44 per hour which coincided with the first step of the WG-07 grade."

Ms. Fonville contends that 4 percent of \$8.12 is \$0.3248, and that if that figure is rounded down to \$0.32, she would be receiving less than a raise of "at least four percent of the representative rate of the grade from which promoted" as required by section S8-3d(1) of FPM Supp. 532-1 (Inst. 17, April 14, 1980). Thus, Ms. Fonville maintains that if the agency had rounded up to 33 cents, she would have not only received a 4 percent raise, but the new rate would have fallen between steps 1 and 2 of a WG-7 and she would have been entitled to the second step of WG-7.

The agency's contrary opinion is set forth as follows in the August 18, 1981, "Report of Findings and Recommendations in the Grievance of Ms. Donna Fonville":

"Ms. Donna Fonville has successfully discovered a technical contradiction in the Federal Personnel Manual. Clearly, FPM Supplement 532-1 (S8-3d(1)) established the least amount of a promotion at four (4) percent of the rate previously held. However, her discovery does not mean the DMAAC Pay-setting policy is not in accord with the intent of the FPM. Examples in the Federal Personnel Manual of rounding to the nearest cent in converting an annual rate of pay to an hourly rate (S8-3g(3)), and

the computation of environmental differentials (SB-6c(2)), are analogous to pay setting in Ms. Fonville's case, although exact parallels cannot be drawn. Thus, the DMAAC Personnel Office correctly set Ms. Fonville's pay upon her promotion from the WG-05 step 2 to the WG-07, step 1."

DEVELOPMENT OF THE CLAIM

This decision is in response to a request from Local 1827 of the National Federation of Federal Employees concerning the claim of Ms. Donna Fonville set out in detail above. This decision has been handled as a labor-relations matter under our procedures contained in 4 C.F.R. Part 22 (1981), which were originally published as 4 C.F.R. Part 21, at 45 F.R. 55689-92, August 21, 1980. The issue presented was initially the subject of a grievance. The grievance has been withdrawn in favor of a joint request for decision pursuant to 4 C.F.R. § 22.7(b), and, in this regard the agency, DMAAC, was served with a copy of Local 1827's submission but has filed no written comments or response. 4 C.F.R. § 22.4 (1981).

In furtherance of our deliberations on the proper computational method of establishing Ms. Fonville's promotional pay increase, we requested the views of the Office of Personnel Management--whose regulation at 5 C.F.R. § 532.407 (1982) and guidance in FPM Supp. 532-1 implement the statutory pay-fixing practices for prevailing rate employees found in 5 U.S.C. § 5343 (1976).

By letter dated May 20, 1982, the Assistant Director for Pay Programs, Office of Personnel Management, responded to our request, in large part as follows:

"It is our opinion that Ms. Fonville is entitled to the additional step rate (WG-7, step 2). OPM regulation 5 CFR 532.407 and guidance in FPM Supplement 532-1, SB-3d(1), clearly state that an employee is entitled to at least 4 percent of the representative rate of the grade from which promoted. Since the increase the Aerospace Center gave Ms. Fonville was less than 4 percent,

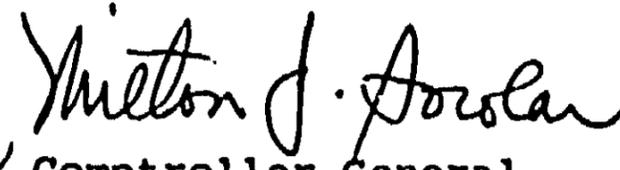
it was not in accordance with the regulatory requirement. Although there exist some related precedents in the U.S. Code and in FPM supplementary material for rounding off to the nearest cent as outlined in the case file submitted by the Defense Mapping Agency, we feel that OPM regulations take precedence in this case."

CONCLUSION

We concur with the interpretation provided by the Assistant Director for Pay Programs, Office of Personnel Management, and hold that the agency incorrectly applied the "four percent rule" set forth in 5 C.F.R. § 532.407 and FPM Supp. 532-1 (SB-3d(1)) in the circumstances of Ms. Fonville's case.

While there may be seemingly analogous instances where entitlement computations are subject to permissive rounding procedures, the fact remains that there is no expressed provision or permissive implication in the clear terms of 5 C.F.R. § 532.407 or the FPM Supp. 532-1 (SB-3d(1)) that would allow an agency to set the pay of a promoted employee at any figure which is less than a 4 percent increase from the representative rate of the grade from which promoted. In so doing in Ms. Fonville's case, the agency exceeded the scope of its administrative discretion afforded under 5 U.S.C. § 5343 and 5 C.F.R. § 532.407.

Accordingly, Ms. Fonville is entitled to the additional step rate WG-7, step 2, effective with the date of her promotion.

for 
Comptroller General
of the United States