

DECISION



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

FILE: B-206757

DATE: July 13, 1983

MATTER OF: Eileen C. Seaman - Conversion to Part-Time
Employment - Federal Employees Health
Benefits Program

DIGEST:

An employee requested conversion to part-time employment prior to the effective date of the Federal Employees Part-Time Career Employment Act of 1978. The Act's implementing regulations require proration of the Government's contribution to the health benefits plans of part-time employees appointed on or after April 8, 1979, but continue the full Government contribution for employees serving on a part-time basis before that date. Although the agency did not formally approve the employee's conversion to part-time status until after April 8, 1979, the employee began to serve on a part-time basis, with the express approval of District Office officials, more than a month before the April 8, 1979, deadline. Therefore, we conclude that she is entitled to continue receiving the full Government contribution to her health benefits plan.

The issue in this decision is whether an employee who changed from full-time to part-time employment is entitled to continuation of the full Government contribution to her Federal Employees Health Benefits plan. We hold that she is so entitled since she began to serve on a part-time basis with the approval of the District Office prior to the effective date of the Federal Employees Part-Time Career Employment Act of 1978. The Act requires that the Government's contribution to a part-time employee's health plan be prorated in accordance with the number of hours regularly worked. However, part-time employees serving prior to the effective date of the Act continue to receive full Government contributions to their health benefits plans.

This decision is in response to a request from Mr. James R. Lawrence, Associate General Counsel of the National Treasury Employees Union (NTEU), concerning the

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claim of Ms. Eileen C. Seaman for reimbursement of additional funds which she has been required to contribute to her Federal health benefits plan because of her change from full-time to part-time employment in 1979.

Ms. Seaman, a Tax Auditor with the Internal Revenue Service (IRS) in New Brunswick, New Jersey, requested and was placed on leave without pay in October 1978, in order to care for her sick child. Thereafter, in a memorandum dated December 7, 1978, Ms. Seaman asked to resume work as a part-time rather than a full-time employee. In response to this request, Mr. Karl Joseph Kohl, Chief of Examination Branch 2, sent a memorandum to the Chief of the Examination Division, dated March 1, 1979, which stated as follows:

"I have approved the part-time employment as requested. [Ms. Seaman] will return to work on Monday, March 5, 1979 * * *."

Ms. Seaman did go back to work on March 5, 1979, as scheduled, and at that time she began to work part-time hours (6 hours a day, 3 days a week), as had been arranged through Mr. Kohl's office. However, Ms. Seaman's request for part-time employment was not officially approved by the IRS Assistant Regional Commissioner for Resources Management until July 7, 1979, and was not made effective until October 7, 1979.

The Federal Employees Part-Time Career Employment Act of 1978, Public Law 95-437, 92 Stat. 1055, October 10, 1978, provides that part-time Government employees who enroll in the Federal Employees Health Benefits Program shall receive a Government contribution to their health plans in an amount directly proportional to the percentage of full-time service they regularly perform. See 5 U.S.C. § 8906(b)(3), as amended.

The Office of Personnel Management (OPM) is authorized to prescribe regulations to carry out the Federal Employees Health Benefits Law. See 5 U.S.C. § 8913(a). In order to implement the changes made in that law by the Federal Employees Part-Time Career Employment Act of 1978, OPM issued Federal Personnel Manual (FPM) Letter 890-22 on April 23, 1979. Under its authority to regulate, OPM decided that the provision of the Part-Time Career Act requiring proration of the Government's contribution would be effective on the first day of the first pay period

beginning on or after April 8, 1979. Thus, part-time employees serving before April 8, 1979, are entitled to continue receiving the full Government contribution. The OPM specifically stated that the health benefits proration required by Public Law 95-437 "does not apply to any employee serving on a part-time basis before April 8, 1979 if the employee continues to serve without a break in service in that or any other position on such part-time basis." FPM Letter 890-22, para. V.

In July 1980, Ms. Seaman received a memorandum from the agency advising her of certain changes in her health insurance premiums as a result of her new part-time status. Specifically, the agency informed Ms. Seaman that all part-time career employees appointed on or after April 8, 1979, who were enrolled in Federal employees health benefits plans would have the Government's contribution to their plans prorated in accordance with the percentage of full-time service they actually performed. This proration was to be made pursuant to FPM Letter 890-22.

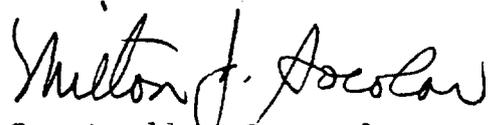
In response, Ms. Seaman asserted that she had returned to work as a part-time employee on March 5, 1979, and, therefore, that her entitlement to the Government's full contribution to her health plan was not affected by the enactment of the Part-Time Career Act. In an effort to regain the full Government contribution to her health plan, Ms. Seaman filed both informal and formal grievances with the agency during 1980, but both grievances were denied.

The IRS, however, maintains that since Ms. Seaman did not receive official authorization to change to part-time career status until October 7, 1979, her part-time appointment cannot be said to have been effective until that time. The IRS further states that, since no official personnel action was taken on Ms. Seaman's behalf between March 5, 1979, and October 7, 1979, she was a full-time employee during that period, working 18 hours and on leave without pay for 22 hours per week.

The issue to be decided, therefore, is whether Ms. Seaman began serving on a part-time basis before April 8, 1979. If she did, she is entitled to the full Government contribution to her health benefits plan. If not, the IRS acted correctly in prorating the Government's contribution to her plan.

We find that Ms. Seaman began working part-time on March 5, 1979, when she actually began to work 18 hours per week, after Mr. Kohl had advised the Chief of the Examination Division that he had "approved the part-time employment as requested." Although the IRS Assistant Regional Commissioner for Resources Management did not officially approve Ms. Seaman's request for conversion to part-time status until July 7, 1979, effective October 7, 1979, the fact remains that Ms. Seaman was authorized by District Office officials to return to duty on a part-time basis in early March 1979.

Under these circumstances, we conclude that Ms. Seaman's return to work on March 5, 1979, on a part-time basis clearly came within the intent of FPM Letter 890-22 to continue the full Government contribution for employees serving on a part-time basis before April 8, 1979. Therefore, she is exempt from proration under the Part-Time Career Act, and is entitled to continue receiving the full Government contribution to her health benefits plan. In addition, she is entitled to reimbursement of funds which were erroneously deducted from her salary by the IRS on the basis that she was not entitled to the full Government contribution.

for 
Comptroller General
of the United States