

**DECISION**



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

**FILE:** B-125137

**DATE:** December 7, 1983

**MATTER OF:** Ralph V. McDermott

**DIGEST:**

When an employee is given a backpay award under 5 U.S.C. § 5596 no deduction should be made for any unemployment compensation he received for the period he received the backpay. This is done since the employee may have to repay the state agency which paid him the benefits and such a matter is for determination under state law. See 35 Comp. Gen. 241 (1955).

This action is in response to a request from an authorized official of the Department of Health and Human Services for a decision as to whether an employee's backpay award should have been reduced by the amount of unemployment compensation he received during the period for which the backpay was awarded. The agency should not deduct the unemployment compensation from the backpay award, but applicable regulations provide that the appropriate state agency should be advised of the backpay award so that any action authorized by state law to recoup the paid benefits may be initiated.

Mr. Ralph V. McDermott was an employee of the Department of Health and Human Services, Public Health Service, when in June of 1980 he resigned his civilian position to join the Commissioned Corps of the U.S. Public Health Service. In December of 1981, he received an honorable discharge. Apparently, he was discharged due to a reduction-in-strength action taken by the Public Health Service.

On January 29, 1982, Mr. McDermott applied to be restored to his civilian position with the Public Health Service under the authority of 38 U.S.C. §§ 2021, 2024, which under certain circumstances entitle discharged members to be reemployed in the civilian positions they held prior to entering the Service. His request for reemployment was rejected by the Regional Personnel Office of the Public Health Service.

On March 3, 1982, Mr. McDermott filed an appeal with the Merit Systems Protection Board (MSPB) alleging that the Public Health Service had wrongfully denied him reemployment to the position of Public Health Advisor.

Initially, the Public Health Service responded to the appeal by informing the MSPB that the original denial of Mr. McDermott's application for reemployment was correct. Subsequently, in the first week of June 1982, the Public Health Service and Mr. McDermott through his attorney, entered into a "STIPULATION FOR WITHDRAWAL OF APPEAL." Under the terms of the stipulation the parties agreed that the appeal would be withdrawn since the parties had resolved the issues raised in the appeal. Specifically, Mr. McDermott was to be reinstated to his former position as a public health advisor effective February 1, 1982, but he resigned retroactively from that position effective May 12, 1982. It was also agreed that Mr. McDermott would "receive backpay for the period beginning February 1 1982, through May 11 1982, minus any income from other employment or unemployment insurance compensation received during that period of time."

On June 6, 1982, the parties filed the stipulation with the presiding official of the MSPB and the appeal was dismissed in accordance with the stipulation of the parties.

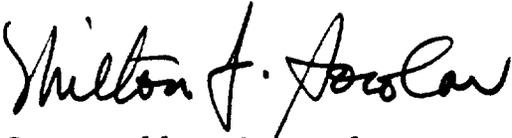
During the period for which he was to receive backpay, Mr. McDermott received \$2,562 in unemployment compensation from the Commonwealth of Pennsylvania. The agency deducted this amount from the backpay award.

The Department of Health and Human Services asks whether the unemployment compensation may be deducted from a backpay award since such action appears inconsistent with the existing law in this area. The Department recognizes that a backpay award, such as here, is made pursuant to 5 U.S.C. § 5596 and is subject to the rules and regulations which implement this statute. We have held that unemployment compensation should not be deducted from a backpay award given an employee. 35 Comp. Gen. 241 (1955). We recognized that the employee might be required to refund the unemployment compensation received to the appropriate state agency. 35 Comp. Gen. at 243. Compare 57 Comp. Gen. 464 (1978).

Presently, the Department of Labor, the agency responsible for implementing the laws regarding unemployment

compensation for Federal employees as contained in 5 U.S.C. §§ 8501-8525, and the Office of Personnel Management, the agency responsible for implementing the law regarding backpay for Federal employees as contained in 5 U.S.C. § 5596, have issued instructions that unemployment compensation paid a Federal employee who subsequently receives a backpay award should not be deducted from the backpay award. The instructions indicate such a matter is for the state agency under state law. These instructions can be found in UCFE (Unemployment Compensation for Federal Employees) Instructions for Federal Agencies, Section 370.2 (December 1977), and Federal Personnel Management Supplement 990-2, Book 550, subchapter S8-6e(4) (June 16, 1977). Also, related to this is section 370 of the UCFE Instructions for Federal Agencies, which advises Federal agencies who make backpay awards to employees to check agency records to see if the employee made a claim for unemployment compensation. If so, the Federal agencies are to inform the appropriate state agency so the state agency may take administrative steps to obtain refund of any benefits paid if such action is provided for by state law.

Accordingly, there is presently no legal basis for the Department of Health and Human Services to deduct the unemployment compensation from Mr. McDermott's backpay award. We note, however, that by decision of this date, Matter of Gurwit, B-208097, we examined this issue in great detail. We discussed the reports we had received from the Department of Labor and the Office of Personnel Management giving their views on the matter. We indicated in that case that if deduction of unemployment compensation from backpay is considered desirable that those agencies should work together to implement changes in existing regulations which would provide for such action. Under current regulations, however, deduction of unemployment compensation from backpay is not authorized. Mr. McDermott should be paid the amount of backpay otherwise due and the State of Pennsylvania notified of the award.

*for*   
Comptroller General  
of the United States