

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

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**FILE:** B-202643**DATE:** February 7, 1984**MATTER OF:** Ronald S. Wong - Promotion While Receiving  
Saved Pay**DIGEST:**

An employee who exercised his reemployment rights and accepted a lower grade, was entitled to saved pay under 5 U.S.C. § 5337. During saved pay period, he was promoted and received a permanent change-of-station transfer to a higher cost area of the country. Employee claims saved pay should have been used for purpose of the two step-increase rule on promotion to help offset increased cost of living in higher cost area. Employee is not so entitled as there is no statutory or regulatory basis for such pay setting formula. Betty J. Beasley, et al., B-197025, August 3, 1981. The provision of 5 U.S.C. § 5334(b) which authorizes the two step-increase rule on promotion, specifically limits its use for pay setting purposes to the rate of pay of an employee's grade and step as though not entitled to saved pay, regardless of circumstances.

This decision is in response to a letter dated May 26, 1983, from Mr. Ronald S. Wong, an employee of the Department of the Air Force, requesting further consideration of his claim for retroactive adjustment of his pay.

This matter was the subject of settlement by our Claims Group, Z-2836189, dated November 1, 1982, which disallowed his claim for the reason that the two step-increase rule on promotions does not apply when saved pay is being received by an employee, citing to our decision Betty J. Beasley, et al., B-197025, August 3, 1981. For the reasons set forth below, we sustain the denial of Mr. Wong's claim.

Mr. Wong expresses the view that the only similarity between Beasley and his case, is that both he and the claimants in Beasley were promoted from a saved pay status. It is his contention that the additional element in his case and one

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which must be considered is the fact that he made a 3,000 mile permanent change-of-station transfer to a high cost area based upon a "silent acknowledgement" of his salary requirements which he inserted in his Standard Form 171 when he applied for that position.

#### BACKGROUND

Mr. Ronald S. Wong, was employed as a mechanical engineer at the Naval Education and Training Center, Newport, Rhode Island in grade GS-11, step 10, in June 1978. The pay of that grade and step at that time was \$23,739. However, due to the fact that he had earlier been employed as a mechanical engineer grade GS-12, step 9, which grade had been reduced on his exercise of his reemployment rights in 1976, it was determined that he was entitled to receive saved pay in the amount of \$27,715 under the then provisions of 5 U.S.C. § 5337(1976).

Effective June 18, 1978, in connection with his transfer from Rhode Island to California, Mr. Wong was promoted to grade GS-13, step 3 (\$27,756). Mr. Wong contends that he should have been placed at grade GS-13, step 5, when he was promoted.

Notwithstanding his present contentions that the relocation of an employee to a higher cost area must be considered as a pertinent element in his pay entitlement, his basic argument is that under the two step-increase rule, on promotion, the rate of pay to be used as the base amount is the pay he was actually receiving at the time of promotion, regardless of the basis for that rate, and regardless of the temporary nature of that rate.

Mr. Wong is incorrect on all counts.

#### DECISION

The statute governing salary retention at the time of Mr. Wong's promotion, 5 U.S.C. § 5337 (1976), which was subsequently repealed by section 801(a)(2) of Public Law 95-495, 92 Stat. 1221, October 13, 1978, provided that an employee, whose grade is actually reduced is entitled to retain the rate of pay he was receiving prior to his reduction for up to 2 years. In conjunction with the foregoing, the law governing promotions, section 5334 of Title 5, United States Code, provides, generally, in subsection (b) that the basic pay of an

employee who is promoted shall not be less than two step-increases above his pre-promotion rate of basic pay. However, that subsection goes on to provide:

"\* \* \* If an employee so promoted or transferred is receiving basic pay at a rate saved to him under section 5337 of this title on reduction in grade, he is entitled to--

"(A) basic pay at a rate two steps above the rate which he would be receiving if section 5337 of this title were not applicable to him;  
or

"(B) his existing rate of basic pay, if that rate is the higher." (Underscoring supplied.)

The phrase "existing rate of basic pay" as used in 5 U.S.C. § 5334(b)(B) is defined in 5 C.F.R. § 531.202(d) (1978) to mean the rate of pay received immediately before the effective date of a transfer, promotion or demotion or within-grade increase and, thus, includes pay saved to an employee under 5 U.S.C. § 5337.

In our decision Betty J. Beasley, et al., B-197025, August 3, 1981, we considered the effect that a saved pay entitlement would have on the two step-increase rule on promotions. We ruled in that case that where an employee was promoted during a period in which entitlement to saved pay existed, the rate of saved pay could not be used as the basic pay of the downgraded position for the purposes of applying the two step-increase rule under 5 U.S.C. § 5334(b), since there was no statutory or regulatory basis for such pay setting formula.

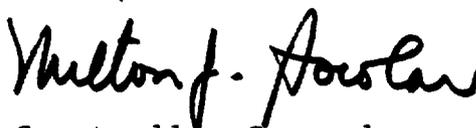
In the present case, Mr. Wong was receiving \$27,715 as saved pay immediately before his promotion. However, but for that, his rate of basic pay would have been \$23,739 (GS-11, step 10), and on promotion, would have been \$26,022 (GS-13, step 1), an amount less than his saved pay rate. Since his rate of saved pay fell between step 2 and step 3 of his promotion grade, his salary was set on promotion at the rate of \$27,756 (GS-13, step 3), under authority of 5 C.F.R. § 531.203(c) (1978).

Mr. Wong also raises an issue of what he calls, "the legal ambiguity" of Block 13 in the Standard Form 171, Application for Employment. This block allows an applicant to specify the lowest salary that he will accept in the position for which he is applying. It seems to be Mr. Wong's contention that the amount placed in the block by an applicant becomes the required minimum salary if the employee's application is accepted. We do not agree.

In Grace R. Woodring, B-193588, April 10, 1979, we considered this issue, and held that the amount placed by a prospective employee in Block 13 of a SF 171 does not require the Government to pay the employee at that rate or a higher rate. A Federal employee's salary must be set strictly in accord with the relevant statutes and regulations, since Government employment is not contractual in nature. Hopkins v. United States, 513 F.2d 1360, 1364 (Ct. Cl. 1975); William J. Elder 56 Comp. Gen. 85 (1976). It is incumbent upon each Federal employee who changes positions within the Government to ascertain what his salary will be in the new position, he cannot assume that his salary preference as expressed on the SF 171 will be followed.

On the point raised by Mr. Wong that being required to relocate to a higher cost area must be considered as an essential element of salary setting on promotion, we disagree. While a transfer of that nature, without a substantial increase in salary to offset substantial increased costs, might be considered by him to be inequitable, the law and the regulations governing pay entitlement must be strictly complied with. We are not aware of any provision of law by which employees, who receive permanent change-of-station transfers, are entitled to salary increases merely because their transfer is to a higher cost area of the country.

Therefore, it is our view that the law and regulations governing salary entitlement in Mr. Wong's case were fully complied with and his rate of pay authorized on promotion in 1978 was correct.

*for*   
Comptroller General  
of the United States