

DECISION

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

FILE: B-220793

DATE: December 27, 1985

MATTER OF: Eric M. Bertlin - Claim for pay retention

DIGEST:

Employee of the Forest Service voluntarily transferred from his position in one national forest to a position with the same title, series and grade in another national forest. Because the new position was in a lower wage rate area, the employee suffered a reduction in pay. The employee is not entitled to retained pay since the transfer is considered to be at his request. The fact that he was informed by a forest service official that the position was being advertised and that his application would be welcomed does not establish that his reduction in pay was other than at his own request.

Mr. Eric M. Bertlin, a wage grade employee of the Forest Service, appeals our Claims Group's denial of his claim for pay retention incident to his transfer to a position in the same grade and step but in a lower wage area.^{1/} For the reasons stated below, we affirm the action of our Claims Group.

According to the agency, Mr. Bertlin, who then held a position in the Klamath National Forest, Yreka, California, voluntarily applied for a position in the Stanislaus National Forest, Sonora, California. He was selected for the position and was transferred effective June 12, 1983. Although both positions were identical in title, series, and grade, Mr. Bertlin's transfer resulted in a reduction in pay as a result of the fact that the Stanislaus National Forest is in a lower wage area.

After reporting to his new duty station and finding that his pay was reduced, Mr. Bertlin filed a grievance in which he requested pay retention based on representations

^{1/} Mr. Bertlin's claim was disallowed by Settlement Certificate No. Z-2863180 issued August 15, 1985, by our Claims Group, GGD.

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made by officials of the Stanislaus National Forest that he would be entitled to retained pay. The grievance examiner denied Mr. Bertlin's request for pay retention finding that he had failed to establish that the reassignment was not at his request and noting that the Government cannot be bound by the erroneous advice of its agents. For essentially the same reasons our Claims Group denied Mr. Bertlin's claim for pay retention.

Under 5 U.S.C. § 5363 (1982), an employee who suffers a reduction in pay due to certain personnel actions may be entitled to retained pay. As specifically provided in the implementing regulations, retained pay is authorized when an employee's pay would otherwise be reduced as the result of placement in a position in a lower wage area. 5 C.F.R. § 536.104(a)(5) (1983). The regulations, however, specifically exclude from entitlement to pay retention an employee who is reduced in pay at his own request. See 5 C.F.R. § 536.105(a)(3) (1983).

Under 5 U.S.C. § 5337 (1976), the predecessor statute to 5 U.S.C. § 5363 (1982), we had occasion to address the concept of pay retention as it applied to an application for a position at a lower grade that had been announced by the agency. Saved pay as authorized by 5 U.S.C. § 5337(a)(3) (1976) did not extend to an employee whose reduction in grade was "at his request." Our decision in Faye Abu-Ghazaleh, 56 Comp. Gen. 199 (1976), was based in part on the following views of the Civil Service Commission (now Office of Personnel Management):

"* * * it cannot be assumed, simply because management initiates recruitment by advertising a vacancy, that it has initiated the demotion of an employee, and therefore that the action automatically entitles an employee to salary retention. To make such an assumption would effectively negate the statutory proviso 'at his request' by filling all positions through established vacancy announcement machinery. On the other hand, it cannot be assumed that because an employee applies for consideration for a vacant position that the action is taken at the employee's request, that it falls within the

exclusion criteria of the law, and that the employee is automatically ineligible for salary retention. In order to deny salary retention, it must be established that the agency does not have a special recruitment need, and that this is not in fact the paramount factor leading to the downgrading.'"

In Mr. Bertlin's case the record before us includes the grievance examiner's decision, the agency's report, and Mr. Bertlin's own communications. We find nothing in these or any other documentation of record which indicates that Mr. Bertlin's transfer to the Stanislaus National Forest was other than at his own request. In appealing from our Claims Group's denial of this claim, Mr. Bertlin in fact states:

"I was contacted by the Stanislaus and advised that there would be a position upcoming on the Stanislaus. They advised me that it would only be advertised forest-wide and that they would like me to put in a voluntary if I was interested in the position. * * *"

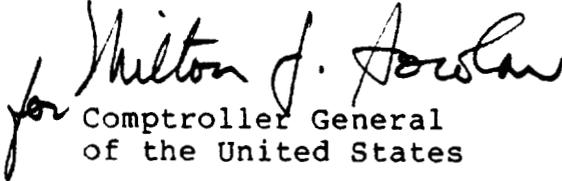
The fact that the position was advertised only within the Stanislaus National Forest indicates that the Forest Service did not anticipate particular difficulty in filling the position and tends to foreclose any argument that there was a special recruitment need. We do not view the action of an agency official in notifying a particular individual that a position has been announced or that they would be pleased to have him apply as establishing that the employee's subsequent application was submitted other than on his own initiative. We, therefore, find that Mr. Bertlin's reduction in pay was at his own request and that he is not entitled to pay retention.

While it is unfortunate that Mr. Bertlin may have been misinformed as to his entitlement to pay retention upon his transfer, that error does not provide a basis to allow him any additional compensation. It is a well-settled rule of law that the Government cannot be bound beyond the actual authority conferred upon its agents by statute or regulations, and this is so even though the agent may have been unaware of the limitations on his authority. See

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M. Reza Fassihi, 54 Comp. Gen. 747, 749 (1975), and court cases cited therein. The Government is not estopped from repudiating advice given by one of its officials if that advice is erroneous. See Joseph Pradarits, 56 Comp. Gen. 131, 136 (1976).

Accordingly, we affirm the action of our Claims Group in denying Mr. Bertlin's claim for pay retention.

for 
Comptroller General
of the United States