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**DECISION**



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

**FILE:** B-221623

**DATE:** March 24, 1986

**MATTER OF:** Roberta L. Randall - Backpay - Forced Resignation

**DIGEST:**

Employee contends that she was forced to resign for fear of retaliation against her because she assisted Air Force investigators with investigation of overtime fraud. After obtaining another position with Air Force at a lower grade employee claims backpay for period of unemployment and time at reduced grade, and relocation expenses. Appropriate authority for consideration of voluntariness of resignation is Merit Systems Protection Board, and without finding of unwarranted or unjustified personnel action by that appropriate authority, there is no basis for backpay award. Even if backpay could be awarded, Back Pay Act does not authorize payment of relocation expenses.

This decision is in response to a request from Mrs. Roberta L. (Mayer) Randall, an employee of the Defense Department, for a review of our Claims Group's Settlement, Z-2853885, February 20, 1985, which determined that Mrs. Randall was not entitled to reimbursement for backpay or other expenses. For the reasons set forth below, we hold that Mrs. Randall's claim must be denied.

The record indicates that Mrs. Randall was employed by the Department of Defense and stationed at Pope Air Force Base, North Carolina, until June 11, 1983, when she resigned. Prior to the time of her resignation, Mrs. Randall contends that she assisted Air Force investigators in an investigation of overtime fraud at Pope Air Force Base and that it was due to fear of retaliation by her superiors for that assistance that she resigned her position. Upon resignation, Mrs. Randall moved to Arizona and by October 1983 was once again employed by the Department of Defense at Williams Air Force Base.

Mrs. Randall claims that because she feared poor performance appraisals as a result of her involvement in

the overtime fraud investigation, she was forced to resign and therefore is entitled to full backpay for the months she was unemployed. She also claims that, since her employment at Williams Air Force Base is at a reduced grade level from her previous position at Pope Air Force Base, she is entitled to the difference in compensation levels. Finally, Mrs. Randall claims she is entitled to reimbursement of moving expenses in that they were incurred as a result of the alleged unjustified personnel action at Pope Air Force Base.

Simply stated, Mrs. Randall contends that her separation was actually an involuntary separation because of her fear of poor performance appraisals and general harassment resulting from the assistance she gave Air Force investigators. The Merit Systems Protection Board (MSPB) has held that:

"Generally, a resignation is considered a voluntary action and as such is not subject to the Board's appellate review. However, a coerced resignation is considered to be tantamount to a discharge. Paroczay v. Hodges, 297 F.2d 439 (D.C. Cir. 1961); Dabney v. Freeman 358 F.2d 533 (D.C. Cir. 1975); McGucken v. U.S., 407 F.2d 1349 (Ct. Cl. 1969); Christie v. U.S. 518 F.2d 584 (Ct. Cl. 1975). The test for determining whether a resignation is voluntary was stated in Leone v. U.S., 204 Ct. Cl. 334, at 339 (1974) as:

'The case law reveals that the element of voluntariness is vitiated only when resignation is submitted under duress brought on by government action. The tripart test for such duress is:

'\* \* \*(1) that one side involuntarily accepted the terms of another; (2) that circumstances permitted no other alternative; and (3) that said circumstances were the result of coercive acts of the opposite party.\* \* \*'

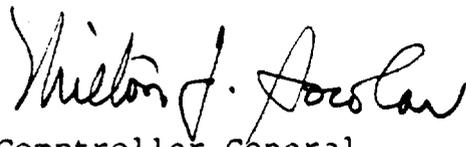
Fruhauf Southwest Garment Co. v. United States, 126 Ct. Cl. 51, 62, 111 F. Supp. 945, 951 (1953).

"A resignation is presumed voluntary and that presumption will prevail unless the appellant presents sufficient evidence to establish that the resignation was obtained through duress or coercion. Christie v. U.S., supra. \* \* \*"  
Robert Myslik v. Veterans Administration, 2 MSPB 241 (1980).

We have held that the appropriate authority for considering a claim that a resignation was coerced is the MSPB or its predecessor, the Federal Employee Appeals Authority. Robert S. Mulhern, B-187184, April 3, 1978. Without a finding by an appropriate authority that an employee has suffered an unwarranted or unjustified personnel action, there is no basis for a backpay award under the Back Pay Act, 5 U.S.C. § 5596 (1982). Here, there is nothing in the record to indicate that Mrs. Randall ever filed an appeal with the MSPB contending that her resignation was coerced. We note that an appeal in a case like this must be filed within the time limits specified by the appellate authority, and if the appellate authority finds the appeal to be untimely, we will not disturb that finding and will not grant backpay. Richard E. Berger, B-191814, January 15, 1979.

Furthermore, even if Mrs. Randall was entitled to backpay, there is no statutory authority which would entitle Mrs. Randall to receive reimbursement for any moving expenses incident to her relocation to Arizona. John H. Kerr, 61 Comp. Gen. 578 (1982). Assuming the facts to be as stated in the record, there is no statutory basis upon which to grant reimbursement since Mrs. Randall's relocation was her own personal decision after she had resigned from her position at Pope Air Force Base.

Accordingly, the determination of our Claims Group is hereby sustained.

for   
Comptroller General  
of the United States