

DECISION

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

FILE: B-221749

DATE: July 28, 1986

MATTER OF: Ronald V. Bell, et al. - Retroactive Pay for Hazardous Duty

DIGEST:

General Schedule employees were performing duties which were subsequently determined to be compensable under the hazardous duty differential provided for in 5 U.S.C. § 5545(d) (1982), and filed claims with the employing agency for retroactive payment of the differential. Agency requested an advance decision as to the propriety of making retroactive payment of the hazardous duty differential. Held, where General Schedule employees engage in a duty which is subsequently determined by the employing agency as a hazardous duty, and there is an adequate record of the days and hours during which the duty was performed, payment therefor may be granted retroactively.

The issue in this decision is whether General Schedule employees may receive hazard pay differential retroactively for the period of time preceding the agency determination of their entitlement thereto. For the reasons stated below, we hold that the employees in question are entitled to retroactive hazard pay differential for the period in question.

BACKGROUND

In June 1985, the Defense Logistics Agency (DLA) concluded a study whereby it was determined that Quality Assurance Representatives of that agency were entitled to pay differential under 5 C.F.R. Part 550, Appendix A, for duties involving exposure to hazardous weather or terrain, specifically moving from one ship to another at sea by means of a Jacob's ladder under adverse weather conditions, at night, or when the seas are high. The DLA field organizations were informed of the study's conclusions and were directed to institute a practicable method for

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paying the hazard pay differential. A number of employees submitted claims for the pay differential for the period prior to DLA's determination of their entitlement. For example, four employees have submitted claims for specific days between November 1984 and May 1985 which met the conditions for the pay differential. By letter dated January 13, 1986, Roberta K. Peters, Deputy Staff Director, Civilian Personnel, Defense Logistics Agency, requested an advance decision from this Office as to the propriety of making the retroactive payments, having been informally advised by the Office of Personnel Management that retroactive payments as described above could not be made absent a Comptroller General decision on the matter. This is in response to that request.

DISCUSSION

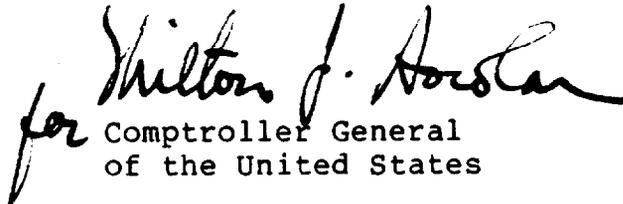
Section 5545(d) of Title 5, United States Code (1982), provides that an employee engaging in intermittent or irregular duties which involve unusual physical hardship or hazard, shall receive a pay differential in addition to the employee's rate of basic pay. Sections 550.901 to 550.907 of Title 5, Code of Federal Regulations (1986), implement the statute and provide for a 25 percent differential for employees exposed to hazardous weather or terrain. As noted above, the DLA determined that its Quality Assurance Representatives were within the coverage of the above cited provisions. Entitlement to the differential is therefore not at issue.

The only question at issue is whether the differential can be paid retroactively to those employees who were engaged in the hazardous duty prior to DLA's finding that they were covered by the differential. It should be noted as well that there appears to be no inadequacy in the records with respect to documentation of the time during which, and the places at which the hazardous duty was performed.

We have held previously, in the case of prevailing rate employees, that where it was determined that they were entitled to environmental differential pay (the equivalent of hazardous duty differential), such entitlement was retroactive to the date of enactment of the regulations implementing the differential. See B-180206, July 16, 1974; B-170182, December 26, 1973; B-163901, May 2, 1973. We have also held that in cases where it is known that over a period

of time employees have performed duty for which they are entitled to additional pay and doubt exists only as to the particular days or hours on which the qualifying work was performed, payment therefor may be made based upon the most reasonable estimate after consideration of all available records. See 53 Comp. Gen. 789, 793 (1974), and B-184797, September 16, 1976.

In the case at hand, there is nothing which would lead us to distinguish between the treatment afforded prevailing rate employees as opposed to General Schedule employees. Moreover, there appears from the record before us no question as to the adequacy of the documentation regarding the days or hours during which the hazardous duty was engaged in. We, therefore, hold that where these General Schedule employees engaged in a duty which is subsequently determined by the DLA to be a hazardous duty as defined in 5 C.F.R. Part 550.901 et seq., and there is an adequate record of the days and hours during which the duty was engaged in, the employees are entitled to payment for the hazardous duty retroactively.

for 
Comptroller General
of the United States