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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Frederick J. Kahn - Retroactive Quality Step
Increase
File: B-221128
Date: September 26, 1986

DIGEST

Quality Step Increase (QSI) for IRS employee was delayed due to administrative oversight in failing to timely process paperwork necessary for approval. Agency has policy of mandatory Sustained Superior Performance Awards of at least 1 percent of salary for various employee categories including that of employee here. An award is automatically triggered if an employee receives a rating above a stated level when his annual rating is completed each year. Employee here was evaluated as Distinguished for the evaluation period of October 1, 1983, to September 30, 1984, which mandated a sustained performance award. At time of employee's annual rating which qualified him for performance award, supervisor tentatively decided that award would be a lump-sum cash payment of at least 1 percent of salary. However, some months later when supervisor submitted formal written recommendation he decided to recommend upgraded award of QSI. Approving official authorized QSI. Retroactive granting of QSI may not be made since IRS retained discretion to grant or deny it until approving official acted. As long as final agency discretion to grant or deny a QSI has not been exercised, employee has no vested right to the QSI and it may not be made retroactively effective.

DECISION

This action results from a request for an advance decision submitted by the Regional Personnel Officer, Southwest Region, Internal Revenue Service (IRS). The issue presented is whether a Quality Step Increase (QSI) granted to an IRS employee as a performance award may be made retroactive to the first pay period after the end of the performance appraisal period. The question arises because the recommendation for the award was not submitted to the official authorized to approve it until almost 6 months after the employee's evaluation was orally communicated to him. For the reasons set forth below, we hold that the award of the QSI may not be made retroactively effective.

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BACKGROUND

Mr. Frederick J. Kahn is a grade GS-12 budget analyst employed by the Southwest Region, IRS. Mr. Kahn is paid under the General Schedule but is covered under the IRS procedure which extends the Merit Pay evaluation system to all supervisors below the GS-13 level and all nonsupervisors below the GS-13 level whose positions meet the definition of "Management Official." The IRS, as a result of a negotiated labor agreement with the National Treasury Employees Union, has adopted a policy of mandatory Sustained Superior Performance Awards for bargaining unit employees. Essentially, the agreement provides that employees will receive such an award if more than half of their critical job elements are rated outstanding when their annual rating is completed each year. That same policy in a slightly modified form was extended to nonbargaining unit employees such as Mr. Kahn. In addition, the Internal Revenue Service follows a policy of allowing supervisors to recommend a QSI in lieu of a lump-sum cash special achievement award when the supervisor believes the employee's sustained superior performance merits this monetarily greater award. The award of a QSI in lieu of a lump-sum cash award requires the approval of the Assistant Regional Commissioner--Resource Management (approving official).

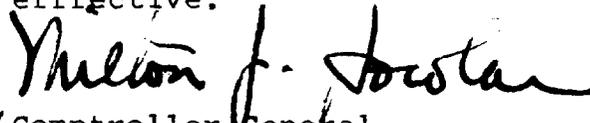
In the instant case, Mr. Kahn's supervisor rated him as "Distinguished" for the evaluation period of October 1, 1983, to September 30, 1984, which mandated a Sustained Superior Performance Award. The supervisor discussed the evaluations with the approving official, who agreed with the rating and the range of the recommended amount of the award. We have been advised that there was no discussion of a QSI for Mr. Kahn then. Mr. Kahn was orally advised of his rating, the approving official's concurrence, and the range of award amount in October 1984 by his supervisor. At that time, the supervisor contemplated a lump-sum cash award to Mr. Kahn. Several months later, however, he decided to recommend an upgraded award of a QSI. The IRS reports that "various circumstances [primarily sudden supervisory and personnel changes in Mr. Kahn's hierarchy of supervision] caused an administrative delay and the necessary paperwork was not completed and submitted until March 11, 1985." It was only on that date that the approving official became aware that the award recommended for Mr. Kahn was a QSI. The proposed award was immediately approved and was processed with an effective date of March 17, 1985.

OPINION

We have previously considered whether QSI's may be made retroactively effective. We have held that as long as the final agency discretion as to whether or not the QSI will be granted has not been exercised, the employee has no vested right to the award and it may not be made retroactively effective. Carolyn Whitlock, 58 Comp. Gen. 290 (1979); John H. Brown, 56 Comp. Gen. 57 (1976).

In this case it is clear that the use of a QSI in place of a lump-sum payment for a Sustained Superior Performance Award must be approved by the designated approving official. It is also clear that, although the approving official was advised of Mr. Kahn's rating and concurred in the rating and the range of the amount of the award in October 1984, there was no specific proposal to grant Mr. Kahn a QSI until March 1985, when the written recommendation finally reached the approving official. Until then there had been no opportunity for the approving official to exercise his discretion to approve the award of the QSI. Thus, until the approving official finally approved the award on March 11, 1985, the agency retained the discretion to approve or deny the award of a QSI to Mr. Kahn.

Accordingly, the Quality Step Increase awarded to Mr. Kahn effective March 17, 1985, may not be made retroactively effective.

for 
Comptroller General
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