



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Handwritten initials and scribbles

Matter of: Senior Executive Service - Suspensions for
Period of 14 Days or Less
File: B-221970
Date: March 16, 1987

DIGEST

Agency questions whether career Senior Executive Service (SES) employees may be suspended for periods of 14 days or less for disciplinary reasons. We agree with the position of the Office of Personnel Management, the agency vested with the authority to issue regulations implementing the statutes governing SES employees, that there is no authority to suspend career SES employees for periods of 14 days or less. Any prior suspensions must be regarded as unwarranted personnel actions which require the payment of backpay.

DECISION

SUMMARY

We have been asked whether an agency can suspend a career employee of the Senior Executive Service (SES) for 14 days or less. The question arises in the context of a challenge by an SES employee at the General Services Administration to a 5-day suspension and his request for backpay.

The Office of Personnel Management (OPM), the agency with authority to implement the relevant provisions of the Civil Service Reform Act concerning the Senior Executive Service, has concluded that there is no authority for such short-term suspensions of SES employees but has declined to allow backpay. We conclude that OPM's position on the lack of authority for short-term SES suspensions is reasonable and is entitled to deference. Since the suspensions were made without legal authority, the suspensions must be regarded as unwarranted personnel actions under 5 U.S.C. § 5596 (1982), thereby requiring backpay.

038332 - 132456

BACKGROUND

This decision is in response to a request from Mr. Raymond A. Fontaine, Comptroller, General Services Administration (GSA), for our opinion concerning the legality of the suspension of an SES career employee for 5 days. The SES employee, who was suspended for disciplinary reasons in December 1984, questions the authority of GSA to suspend SES members for a period of 14 days or less and seeks backpay for his suspension. We have learned that prior to the suspension of this SES employee, GSA suspended another career SES employee for disciplinary reasons for a period of 14 days.

In February 1985, GSA asked OPM for an advisory opinion on the authority to suspend SES employees. The OPM staff advised that it appeared that authority existed only for long-term suspensions (more than 14 days) but that the issue of short-term suspensions was under review in conjunction with the publication of regulations on SES adverse actions. In response to our request for comments, the OPM General Counsel later concluded that the Civil Service Reform Act:

"* * * clearly elected to exclude the short-term suspension authority in the SES in that the CRSA [Civil Service Reform Act] legislative history specifically made reference to the exclusion of the SES from short-term suspension coverage under 5 U.S.C. § 7503 although regrettably, no explanation was offered."

However, the OPM General Counsel also said there was no basis to overturn past actions of short-term suspensions of SES employees.

The OPM position on the lack of authority for short-term SES suspensions is confirmed in the proposed regulations published May 30, 1986, 51 Fed. Reg. 19, 554, which state as follows in the supplementary information accompanying these proposed regulations:

"The most frequently asked question was why the interim regulations did not address short term suspensions of SES appointees. The reason is that subchapter V of chapter 75 does not cover suspensions of 14 days or less. Furthermore, subchapter I of chapter 75, which covers such actions, pertains only to employees in the competitive service. Thus, there is no express statutory authority for taking a suspension of 14 days or less against an appointee in the SES.

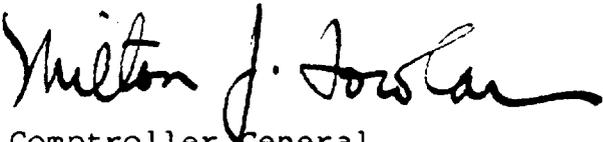
"It appears that the Congress may have viewed suspensions of 14 days or less (normally imposed for less serious offenses) as inappropriate disciplinary measures for SES members. Because of their greater responsibilities, SES members have a significant impact on agency programs and on the public image of the Government. Consequently, offenses by them would be considered more serious and normally would warrant the imposition of a more severe penalty."

OPINION

We have no direct knowledge of the nature of the alleged misconduct or infractions by the two SES employees who were suspended by GSA and we do not intend to review GSA's determinations to punish these employees. Our focus in this decision is solely on the questions whether there is legal authority for an agency to suspend an SES employee for a period of 14 days or less and, if not, whether the employee is entitled to backpay for the period of the suspension.

The statutory authority for disciplinary actions against SES employees is contained in 5 U.S.C. §§ 7541-7543 (1982 and Supp. III, 1985), but this authority expressly applies only to removals for more than 14 days. 5 U.S.C. § 7542. The statutes governing suspensions for 14 days or less apply only to employees in the competitive service and do not apply to SES employees. See 5 U.S.C. §§ 7501-7504 (1982) and S. Rept. No. 95-969, 95th Cong., 2d Sess. 47 (1978). Thus, we agree with the position of OPM that there is no authority for agencies to suspend career SES employees for periods of 14 days or less.

At the same time, we find no basis to sustain past actions or to deny backpay. The OPM General Counsel has not articulated any basis to deny backpay. Furthermore, a suspension without legal authority clearly must be considered to be an unjustified or unwarranted personnel action resulting in the withdrawal of an employee's pay as defined under the Back Pay Act, 5 U.S.C. § 5596 (1982), and the implementing regulations contained in 5 C.F.R. Part 550, Subpart H (1986). Finally, since the OPM position on short-term suspensions reflects an interpretation of the Civil Service Reform Act which must be related back to the Act's enactment in 1978, we conclude that backpay must be allowed for these suspensions.

for 
Comptroller General
of the United States