

Eastwood-PLM



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: David T. Simrak

File: B-213727.2

Date: June 8, 1987

DIGEST

Military retiree who works for the Department of the Interior and claims credit for all of his active military service during the Vietnam conflict for the purpose of annual leave accrual is only entitled to service credit in accord with the Office of Personnel Management's interpretation of the leave statute. That interpretation allows credit for annual leave accrual purposes only for that active military service performed during a war or in the area of a campaign or expedition for which a campaign badge has been authorized. Since the Vietnam conflict is not a war for this purpose, only the retiree's active service spent in the area of the Vietnam campaign or expedition is creditable service.

DECISION

This case concerns an employee's claim for additional annual leave based on credit he seeks for military service he performed during the Vietnam conflict. We conclude that the claim may not be allowed because the military service he seeks credit for, although performed during the Vietnam conflict, was not in the area of that campaign or expedition as is required under the applicable statute as interpreted by the Office of Personnel Management, the agency charged with its administration.

BACKGROUND

Mr. David T. Simrak began working for the Department of the Interior in 1978 after his retirement from the Air Force. The rate at which he accrued annual leave in the Department of the Interior was determined under 5 U.S.C. § 6303 by adding the credit for his service with the Department and the credit for his active military service performed in the Armed Forces "during a war, or in a campaign or expedition for which a campaign badge has been authorized." Annual leave is accrued at

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consecutively increasing rates for employees with less than 3 years of service, 3 years but less than 15 years of service, and 15 or more years of service. Thus, generally, the more service credit, the greater the rate of annual leave accrual.

In May 1983 the Department determined that Mr. Simrak was entitled to credit for 10 months and 15 days of military service in computing the rate of annual leave accrual, a reduction from a prior determination. There is no dispute about the credit for his civilian service with the Department; the dispute is over the amount of active military service for which he may receive credit.

Subsequent to May 1983, Mr. Simrak wrote several letters to the Office of Personnel Management suggesting a different interpretation of the language in 5 U.S.C. § 6303 that would allow him credit for all of his active military service during the conflict in Vietnam rather than just the time that application of the Office's interpretation allowed. The Office of Personnel Management declined Mr. Simrak's suggestion. He then sent a claim for additional annual leave and a request for review of the Office's regulations through the Department of the Interior to this Office in November 1983. In March 1984 our Office replied to Mr. Simrak, generally reciting the Office of Personnel Management's authority to issue the regulations, reciting the regulations themselves, but suggesting that he further develop documentation to verify his participation in a campaign or expedition that may be submitted to his agency for additional service credit.

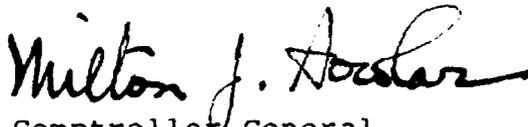
Mr. Simrak developed additional documentation concerning his service in Vietnam, and the Department of the Interior determined in October 1984 under the Office of Personnel Management's regulations that credit for his military service should be increased to 1 year, 1 month, and 16 days. He also continued efforts to have the Office of Personnel Management's interpretation of section 6303 changed. He was unsuccessful. He also brought the matter to the attention of the Merit Systems Protection Board, which declined to take jurisdiction. In February 1986 Mr. Simrak again presented his claim for additional annual leave to this Office, supplemented with additional material in April 1986, in which he included all of his documentation and exhaustively pointed out what he considered to be the infirmity with the Office of Personnel Management's regulations concerning credit for military service.

Mr. Simrak's claim is based on his interpretation of the phrase in 5 U.S.C. § 6303(a) granting credit for active military service "during a war, or in a campaign or expedition for which a campaign badge has been authorized" which differs

from the Office of Personnel Management's interpretation. Since, as determined by the Office of Personnel Management, Vietnam was not a "war" for the purpose of 5 U.S.C. § 6303, Mr. Simrak's claim centers on the interpretation of the term "in a campaign or expedition." The Office of Personnel Management has determined that while the modifier "during," preceding "war," allows credit for service " * * * during * * * wartime periods * * *" regardless of " * * * where the person served * * * or whether the person was assigned to combat or noncombat duties * * *," the modifier "in," preceding "a campaign or expedition," does not allow credit for service " * * * for the duration of the campaign or expedition, but only for the period of his/her service in the area of the campaign or expedition as indicated by the official records." Federal Personnel Manual Supp. No. 296-33, S6-1.8(e)(1) and (2) (Inst. 19, Sept. 5, 1985). Mr. Simrak points out that this means in effect that credit is given only for active military service actually in a campaign or expedition. His contention is that once a service member establishes any period of his active military service as being actually in a campaign or expedition, then all of that member's active service during the campaign or expedition is also creditable even if it is not actually within the area of the campaign or expedition.

ANALYSIS AND CONCLUSION

It is fundamental that Federal agencies and officials must act within the authority granted to them by statute in issuing regulations. It is equally fundamental, however, that regulations are deemed to be within an agency's statutory authority and consistent with congressional intent unless shown to be arbitrary or contrary to the statutory purpose. 64 Comp. Gen. 319 (1985). And, great deference is to be given to the interpretation given a statute by the agency charged with its administration. Udall v. Tallman, 380 U.S. 1, 16 (1965). The Office of Personnel Management is empowered under 5 U.S.C. § 6311 to prescribe regulations necessary for the administration of the annual leave statute, including the quoted phrase in section 6303. The Office of Personnel Management's interpretation of the statutory phrase quoted above appears reasonable and has not been shown to be arbitrary, capricious or contrary to the statutory purpose. Accordingly, we defer to that interpretation, and Mr. Simrak's claim for additional annual leave based on his different interpretation is denied.



Acting
Comptroller General
of the United States