



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lucio R. Gallardo - Salary Rate Upon
Reemployment and Military Service Credit
for Annual Leave Accrual

File: B-226020

Date: October 23, 1987

DIGEST

1. An employee who formerly held a position as a structural engineer in the GG system at the GG grade 12, step 7 level when he was working for the Navy during the conflict in Vietnam, which he says was equivalent in duties and responsibilities to a GS grade 12, step 7 level position, claims that he should have received the step 7 rate of pay rather than the step 1 rate of pay in the position in which he was reemployed by the Navy in 1981. The employee was only entitled to the step 1 rate of pay upon reemployment because the highest previous rate rule applies only to the salary rate earned by the employee in his previous position (the GG-12/7 salary rate was lower than the step 1 rate of the grade in which he was reemployed), not to the level of job responsibility in his previous position.
2. Service in the Philippine Commonwealth Army is not active military service that is creditable for the purpose of determining an employee's annual leave accrual rate.

DECISION

Mr. Lucio R. Gallardo, an employee of the Navy Department, appeals the determinations by our Claims Group that he is only entitled to the step 1 pay rate of the grade in which he was reemployed by the Navy and that he may not count his service in the Philippine Commonwealth Army as active military service in establishing his service computation date. His service computation date determines his rate of accrual of annual leave, his status in a reduction-in-force, and his eligibility for and amount of annuity upon retirement. We agree with the Claims Group's determinations since Mr. Gallardo's pay rate upon reemployment exceeds the highest rate he previously earned and since service in the Philippine Commonwealth Army is not creditable as active military service in establishing his service computation date.

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Mr. Gallardo, born in the Philippine Islands, served in the Philippine Commonwealth Army in World War II and was honorably discharged December 3, 1945. During the conflict in Vietnam, he was employed by the Navy as a structural engineer in Saigon. Mr. Gallardo's position was classified in the GG system,^{1/} at the grade level of GG 12, step 7, paying \$6,877 annually at the time he was in that position in July 1968. He states that the duties and responsibilities of positions in the GG system corresponded by grade level to those in the counterpart GS system. However, he acknowledges that the pay rate for the GG system was much lower at the same grade level than that for the counterpart GS system. Upon his reemployment with the Department of the Navy in January 1981, he was placed at the GS-12, step 1 pay rate of \$26,951 annually.

The Beginning Step Level Upon Reemployment

Mr. Gallardo believes that the appropriate starting salary upon his reemployment with the Navy in 1981 should have been based upon the GS grade and step level for a GS position that has equivalent duties and responsibilities to the structural engineer position that he held in Vietnam in the GG system. He argues that the duties and responsibilities of the GG 12, step 7 position are identical to those of the GS-12 position to which he was appointed in 1981; therefore, he should have been appointed in step 7, not step 1.

Under the "highest previous rate" rule, published at 5 C.F.R. § 531.203(c) (1981), an agency has discretionary authority to set the salary of an employee at the lowest step of the employee's grade that equaled or exceeded the employee's highest previous rate of pay. Contrary to Mr. Gallardo's view, however, the rule applies only to the salary rate previously earned by the employee, and not to the grade or step level the employee previously attained. Banaag S. Novicio, 64 Comp. Gen. 17 (1984). In applying the rule, the employee's highest previous pay rate is compared to the pay scale of the employee's current grade that was in effect at the time the highest previous rate was received. In this case Mr. Gallardo's highest previous pay rate is \$6,877, which he received in July 1968. The grade at which he was appointed by the Navy in 1981 was GS-12, step 1, the pay of which was \$12,174 in July 1968. Since the pay of a

^{1/} The GG system apparently was a special pay system applicable to certain personnel employed by the Navy in Vietnam. Mr. Gallardo states that the GG system applied solely to Filipinos.

GS-12, step 1, in 1968 (\$12,174) exceeded his highest previous rate which he received in 1968 (\$6,877), the Navy's appointing him at GS-12, step 1, in 1981 did not violate the highest previous rate rule. Accordingly, the disallowance of his claim for a retroactive pay increase is affirmed.

Credit for Service in the Philippine Commonwealth Army

An employee's active military service is a factor in establishing his service computation date, which determines the employee's rate of accrual of annual leave, his status in a reduction-in-force, and his eligibility and amount of annuity for retirement. 5 U.S.C. §§ 3502, 6303, 8332(c)(1) (1982). The Office of Personnel Management is empowered to prescribe regulations necessary for the administration of these laws, and the Office's regulations at the time Mr. Gallardo was reemployed limited the creditability of service in the Philippine Commonwealth Army as follows:

"Service in the organized military forces of the Government of the Commonwealth of the Philippines (including recognized guerilla units) between July 26, 1941, and June 30, 1946, when the forces were in the services of the armed forces of the United States is not service in the military or naval forces of the United States for preference." Federal Personnel Manual Supp. No. 296-31, S211-9, Appendix B (Inst. 58, September 13, 1972).

Mr. Gallardo contends that this limitation applies only to determining a veteran's preference. That is in error because elsewhere in Appendix B is a note explaining that the Appendix is to be used for reduction-in-force and leave purposes. Also, the main section of FPM Supp. No. 296-31, S210-5(a) (Inst. 81, November 17, 1980) concerned with explaining that active military service is creditable for annual leave accrual rate and reduction-in-force status purposes specifically cites to Appendix B for determining active military service. This is consistent with 38 U.S.C. § 107 (1982), which states that service in the Philippine Commonwealth Army (during the time that Mr. Gallardo served) is deemed not to be active military service for the purposes of "any law of the United States" conferring rights, privileges, or benefits upon any person by reason of such active service. This law was upheld in another context in Filipino American Vet. & Dep. Assn. v. United States, 391 F. Supp. 1314 (N.D. Cal. 1974).

Thus, Mr. Gallardo's service in the Philippine Commonwealth Army during World War II is not considered active military service for the service computation date for annual leave accrual under the laws and regulations and is not creditable.

Therefore, the Claims Group's determinations that Mr. Gallardo was entitled only to the lowest step of his grade upon reemployment and that he was entitled to no credit for his service with the Philippine Commonwealth Army for annual leave accrual are affirmed.

The General Accounting Office does not adjudicate civil service retirement claims because jurisdiction over them is specifically given to the Office of Personnel Management under 5 U.S.C. § 8347 (1982), nor does it consider claims of improper administration of the requirements of current reduction-in-force regulations because appeals of those claims are heard by the Merit Systems Protection Board under 5 C.F.R. § 351.901 (1982).^{2/} Those are matters which also involve his service computation date that Mr. Gallardo may pursue with those agencies if he wishes.

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^{2/} We note that it appears that service in the Philippine Commonwealth Army is not creditable service for a service computation date for reduction-in-force purposes. See Appendix B of the Federal Personnel Manual Supp. No. 296-31, S211-9, cited above. And it does not appear that such service is creditable for retirement purposes either. See 5 U.S.C. § 6303, which includes as creditable service for annual leave accrual all creditable service for retirement purposes.