



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Foreign Service Officers - Inclusion of Special
Differential in Lump-Sum Leave Payment
File: B-227716
Date: March 23, 1988

DIGEST

State Department Foreign Service officers who are receiving a special differential at the time of their separation may have such amount included in their lump-sum leave payment. The officers are receiving the pay under statutory authority, and the lump-sum leave payment is computed on the basis of the employee's rights at the time of separation. Furthermore, since the employee's rights vest at the time of separation, there is no authority to place a limitation occurring between the time of separation and the expiration of the period to be considered in determining the amount of the lump-sum leave payment.

DECISION

The Director of Position and Pay Management, Department of State, on behalf of the State Department and the United States Information Agency (USIA), has requested our decision on the issue of whether a special differential may be included in the computation of annual leave lump-sum payments for eligible Foreign Service officers. For the reasons that follow, we conclude that the special differential may be included in the computation.

The Secretary of State is authorized by statute to pay special differentials, in addition to other compensation, to Foreign Service officers who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements. 22 U.S.C. § 3972(a) (1982). Thus, the Secretary has promulgated regulations under this authority in Volume 3 of the Foreign Affairs Manual (3 FAM) providing for additional pay computed on a percentage of the basic compensation earned during the pay period for various categories of work.

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3 FAM § 238.7. The allowance is paid at a rate of 10, 13, or 18 percent of the basic compensation earned during the pay period.

The State Department and USIA both believe that the special differential should be included in lump-sum leave payments because of the similarities between this method of payment and the type of overtime discussed in our holding in 36 Comp. Gen. 18 (1956). In that decision we allowed premium compensation, which was paid on a percentage basis for administratively uncontrollable overtime, to be included in lump-sum leave payments since the employees were receiving such compensation at the time of their separation.

OPINION

An employee who is separated from the service is entitled by statute to receive a lump-sum leave payment for accumulated and current accrued annual leave. 5 U.S.C. § 5551 (1982). As the agency points out in its submission, Foreign Service officers are precluded by statute from receiving premium pay. 5 U.S.C. § 5541(a)(xiv) (1982). However, they are included in the definition of employee in 5 U.S.C. § 2105 (1982), so as to bring them within the purview of section 5551 to authorize them payment for their accrued leave upon separation. See 3 FAM § 492.1.

This Office has held that the lump-sum leave payment is to be computed on the basis of the employee's rights at the time of separation under all applicable laws and regulations existing at that time which would have affected his compensation had he remained in the service for the period covered by his leave. 38 Comp. Gen. 161 (1958); 36 Comp. Gen. 18, supra. Thus, in addition to administratively uncontrollable overtime, we have considered claims for inclusion of a post differential in a lump-sum leave payment if, in fact, the employee was entitled to payment of that differential at the time of his separation. Philip A. Whiting, B-200854, Mar. 18, 1981; William E. Pope, Jr., Nov. 9, 1976.

Accordingly, we see no bar to payment of the special differential as part of a lump-sum leave payment to Foreign

Service officers who are receiving it at their time of separation. The special differential is specifically authorized by 22 U.S.C. § 3972(a) and applicable regulations in 3 FAM, and, assuming that the employee is receiving such compensation at his time of separation, the amount should be included in his lump-sum leave payment.

However, we disagree with the proposal of the State Department and USIA to limit the payment of the special differential to 21 calendar days after separation because of the provision in 3 FAM § 238.10h which suspends the allowance when a Foreign Service officer is on leave for more than 21 calendar days. As previously stated, the employee's rights under 5 U.S.C. § 5551 to a lump-sum payment vest at the time of separation. The employee is entitled to have any allowances, differentials, or premium pay included in this lump-sum payment to the extent the employee would have received such pay if the employee had remained in the service for the period covered by the lump-sum payment.

There is no reason to presume as a general rule that the employee, instead of separating from the service, would have taken more than 21 days of leave and thereby would have lost entitlement to this special differential. Furthermore, an agency may not treat the lump-sum period as annual leave for the purposes of suspending this allowance since, by the terms of 5 U.S.C. § 5551, the lump-sum payment is considered to be pay for taxation purposes only and does not constitute creditable service. James L. Davis, Jr., 59 Comp. Gen. 15 (1979).

Accordingly, Foreign Service officers who are receiving the special differential at the time of their separation may have such amount included in their lump-sum leave payment.

for 
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