



The Comptroller General
of the United States

Washington, D.C. 20548

Beitzman

Decision

Matter of: Lewis E. Robinson - Demotion - Claim for
Backpay and Compensatory Damages

File: B-230496

Date: June 7, 1988

DIGEST

An employee is not entitled to backpay under the Back Pay Act, 5 U.S.C. § 5596 (1982), for the difference between a grade GS-5 and a grade GS-6 salary where there is no evidence of an unjustified or unwarranted personnel action. The employee was downgraded from a supervisory position prior to completion of a probationary period. See 5 U.S.C. § 3321 (1982). Further, neither the Back Pay Act nor any other statutory authority provides for payment of compensatory damages.

DECISION

This decision is in response to a request by the National Federation of Federal Employees, Local 1453, on behalf of Mr. Lewis E. Robinson, a former Veterans Administration (VA) employee, for backpay under the provisions of the Back Pay Act, 5 U.S.C. § 5596 (1982). Mr. Robinson is also claiming numerous other amounts which are in the nature of compensatory damages.

Mr. Robinson's claim is denied since there is no evidence in the record of an unjustified or unwarranted personnel action so as to support a claim for backpay, nor is there any statutory authority to award a claimant compensatory damages.

BACKGROUND

Mr. Robinson was employed by the VA Medical Center, Miami, Florida, and he was promoted from a grade GS-5 police officer to a grade GS-6 supervisory police officer in April 1981. Before he completed the 1-year probationary period at the grade GS-6 level, he was downgraded by the VA in April 1982, to the grade GS-5 level. Mr. Robinson was

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subsequently dismissed from his position on October 8, 1982, on the basis of medical evidence which indicated that he was not physically or mentally able to perform his assigned duties.

His dismissal from the VA was upheld by the Merit Systems Protection Board (MSPB) in a decision dated January 30, 1984. The downgrading action was not considered by the MSPB on the basis that it had no jurisdiction since the statutory authority in 5 U.S.C. § 4303(f)(1) for actions based on unacceptable performance does not provide a right to an appeal to a supervisor or manager who is reduced in grade prior to completion of a probationary period.

Mr. Robinson was reinstated to his duties as a grade GS-5 police officer on October 10, 1984. The basis for this action was a determination by the Office of Workers' Compensation Programs, Department of Labor, that he was entitled to disability compensation due to a work-related illness. Labor notified VA that Mr. Robinson's claim for disability compensation had been approved for intermittent wage loss from January 13, 1982, through August 15, 1982, and for total wage loss from August 16, 1982, through October 31, 1983, a period which encompassed both Mr. Robinson's downgrading and subsequent dismissal by the VA.

When the VA restored Mr. Robinson to his position in 1984, the agency signed a settlement agreement with Mr. Robinson which awarded him backpay at grade GS-5 from November 1, 1983, to October 9, 1984, when he was rehired by the VA. The November 1 date was selected as the date Mr. Robinson was ready, willing and able to return to work. Mr. Robinson was subsequently dismissed from his position with the VA in October 1987.

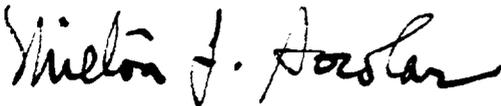
Mr. Robinson seeks backpay under the provisions of the Back Pay Act, 5 U.S.C. § 5596 (1982), in the amount of the difference between grade GS-5 and grade GS-6 pay from April 1, 1982 (the date of his downgrading), to October 1987. Mr. Robinson states that the VA committed an unjustified and unwarranted personnel act when it removed him from a position while he was suffering from a job-related illness. In addition, Mr. Robinson has claimed numerous other compensatory damages, e.g., medical expenses, loss of home, physical health and emotional stability, etc.

OPINION

The authority of this Office to award backpay is derived from the Back Pay Act, 5 U.S.C. § 5596 (1982), which provides a remedy for instances in which an employee is found to have undergone an unwarranted or unjustified personnel action which has resulted in the withdrawal or reduction of all or a part of his pay, allowances or differentials. There is no authority to award backpay under the Back Pay Act absent a finding of an unjustified or unwarranted personnel action. 62 Comp. Gen. 239 (1983). An unjustified or unwarranted personnel action has been defined as an act of commission or omission that an appropriate authority subsequently determines, on the basis of substantive or procedural defects, to have been unjustified or unwarranted under applicable law, Executive order, rule, regulation, or mandatory personnel policy established by an agency or through a collective-bargaining agreement. 5 C.F.R. § 550.803 (1987).

We find no evidence in the record that the VA violated any law or regulation or committed an unjustified or unwarranted personnel action when it demoted Mr. Robinson from a grade GS-6 to a grade GS-5 position. Mr. Robinson was serving a 1-year probationary period as a supervisor, and he could be returned to his prior position by the agency for failure to satisfactorily complete the probationary period without the opportunity to appeal to the MSPB. 5 U.S.C. § 3321 (1982) and 5 C.F.R. part 315, subpart I (1982). This Office does not have the authority to question the agency's determination in this area.

Accordingly, Mr. Robinson's claim for backpay is denied. Further, neither the Back Pay Act, 5 U.S.C. § 5596, nor any other statutory authority provides for payment of the compensatory damages claimed by Mr. Robinson. Therefore, this claim is also denied. See John H. Kerr, 61 Comp. Gen. 578 (1982).

for 
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