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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sheryl L. Stanley - Highest Previous Rate Rule - Promotion

File: B-230720

Date: November 16, 1988

DIGEST

An employee of the Air Force Accounting and Finance Center who transferred from a higher paying position with the Naval Supply Center claims that under the highest previous rate rule she is entitled to higher grade and pay after a subsequent promotion. Since the employee's salary after promotion exceeded her existing rate of pay by two step increases, as required under 5 U.S.C. § 5334(b) (1982), the highest previous rate rule does not apply.

DECISION

Sheryl L. Stanley, an employee of the Air Force Accounting and Finance Center, Denver, Colorado, appeals the decision of our Claims Group (Z-2863759, Feb. 5, 1988) denying her claim for retroactive step increases and backpay under the highest previous rate rule. We hold that Ms. Stanley was not entitled to the higher compensation levels and affirm the decision of our Claims Group.

Ms. Stanley was employed, until August 16, 1980, as a grade GS-5, step 6, payroll clerk at the Naval Supply Center in San Diego, California. She transferred to the Air Force Accounting and Finance Center in Denver because her husband was retiring from the military and moving there. Since her transfer was voluntary, she had no entitlement to retained pay and was hired at grade GS-3, step 10. On February 22, 1981, she was promoted to grade GS-6, step 1, as a military retirement claims examiner and was awarded subsequent promotions to grade GS-7, step 1; grade GS-8, step 1; and grade GS-9, step 2. She contends that under the highest previous rate rule her promotions should have been to grade GS-6, step 3; grade GS-7, step 2; grade GS-8, step 2; and grade GS-9, step 3, respectively.

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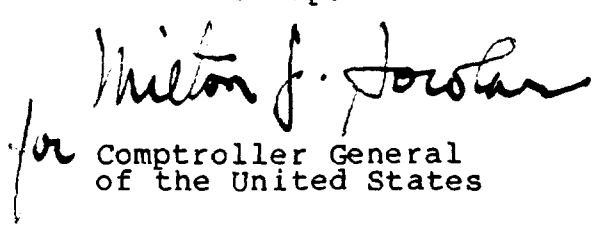
The establishment of an employee's rate of pay upon promotion under the General Schedule is governed by 5 U.S.C. § 5334 (1982) and regulations issued by the Office of Personnel Management and published in section 531.203 of title 5, Code of Federal Regulations (1988). Under 5 U.S.C. § 5334(b), an employee who is promoted to a position in a higher grade is entitled to basic pay at the lowest rate of the higher grade which exceeds his existing rate of pay by not less than two step increases of the grade from which he is promoted.

The applicable regulation prescribes that an agency may utilize the employee's highest previous rate of pay in establishing a new rate of pay upon promotion unless the employee is entitled to a higher rate under the promotion provisions of 5 U.S.C. § 5334(b). See 5 C.F.R. § 531.203(c). This authority is generally referred to as the highest previous rate rule. Under the provisions of that rule, an agency has discretionary authority to set the salary of an employee at the lowest step of the employee's new grade that equals or exceeds the employee's highest previous rate of pay. We have consistently held that "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, 18 (1984); Ronald L. Fontaine, B-214885, Aug. 20, 1984.

Ms. Stanley was promoted from grade GS-3, step 10, to grade GS-6, step 1, which met the requirement of 5 U.S.C. § 5334(b) that the promotion exceed her existing rate of pay by two step increases of the grade from which she was promoted. Therefore, the highest previous rate rule does not apply to that or any subsequent promotion.

We note, moreover, that Ms. Stanley's highest previous salary was $13,118 at the GS-5, step 6, level at the Naval Supply Center in San Diego. Her salary in Denver after her promotion to GS-6, step 1, was $13,672, which exceeded the highest previous rate she had earned as a federal employee.

For the reasons given above, we affirm the decision of our Claims Group.



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