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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: L. Wayne Faulkner
File: B-238990
Date: June 17, 1991

DECISION

This is in response to an appeal from our Claims Group's determination that interest could not be paid on the backpay granted to Mr. L. Wayne Faulkner to correct errors in recognizing Mr. Faulkner's step increases since the agency's determination to grant backpay became final before the effective date of the amendment to the Back Pay Act, 5 U.S.C. § 5596, allowing interest.^{1/} For the following reasons, we sustain the Claims Group's denial of interest.

Due to administrative errors, Mr. Faulkner's salary was not increased to step 7 and step 8 on June 27, 1982, and June 23, 1985, respectively, when it should have been. These errors were corrected on March 18, 1987, by personnel correction notices which immediately increased Mr. Faulkner's current pay and authorized the backpay due him. On July 29, 1987, the Personnel Office sent Mr. Faulkner's backpay case to the Central Payroll Office for processing. The Central Payroll Office conducted an audit which was completed in August 1987. However, for reasons which are not apparent, the backpay payments were not timely made. When nearly a year had passed, Mr. Faulkner filed a grievance demanding backpay and interest. In July and August 1988, the agency paid the backpay that was due him but denied the interest payment.

The Back Pay Act provides that an employee who is found by appropriate authority to have been affected by an unjustified or unwarranted "personnel action" which has resulted in the withdrawal or reduction of all or part of the employee's pay is entitled upon correction of the personnel action to receive

^{1/} The Department of Health and Human Services and the American Federation of Government Employees, AFL-CIO, Local 1923, agreed to submit the question of whether interest was due on backpay granted to Mr. Faulkner. This question was initially determined by our Claims Group in Settlement Certificate Z-2866287, April 6, 1989.

an amount equal to the pay which the employee would have received during the period if the personnel action had not occurred. 5 U.S.C. § 5596(a). The act was amended in 1987 to require payment of interest on backpay awards computed for the period beginning on the effective date of the withdrawal or reduction involved and ending on a date not more than 30 days before the date on which payment is made. 5 U.S.C. § 5596(b)(2).

The amendment to the Back Pay Act requiring the payment of interest specifically limits interest payments to backpay granted by final judgment entered or final decision rendered on or after December 22, 1987, finding the employee to have been the subject of an unjustified or unwarranted personnel action.^{2/} Regarding determinations made before that date, the implementing regulations provide that the interest amendment will not apply if the determination of an unjustified or unwarranted personnel action was no longer subject to reconsideration or higher level review or appeal on December 22, 1987. 5 C.F.R. § 550.806 (1990). Neither the amendment nor the regulations contemplate that the date of payment of the backpay should determine finality of the backpay award.

The Claims Group denied the claim for interest on the basis that the determination on which the backpay was awarded Mr. Faulkner was final on March 18, 1987, when the Standard Forms 50-B were issued retroactively correcting his step increases and authorizing backpay.

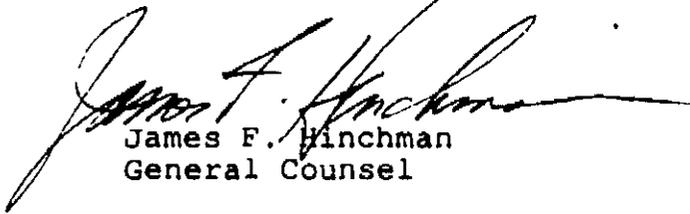
On appeal we received additional information from the agency indicating that, under their procedures, the audit that was completed on August 7, 1987, was the final step in the determination process and constitutes the point at which the agency decision was no longer subject to review. Any processing after that point is purely ministerial. We reviewed the copy of the signed and dated audit submitted by the agency and note that the cumulative totals matched the amount of backpay that was paid to Mr. Faulkner in 1988.

It is unfortunate that the payment processing was not completed until a year later after Mr. Faulkner filed a grievance seeking payment of the backpay the agency previously had determined due him. However, the delay in payment does not entitle him to interest since the underlying determination

^{2/} Pub. L. No. 100-202, § 101(m), 101 Stat. 1329-428 (1987).

that because of the unjustified or unwarranted personnel action he was due backpay was final on August 7, 1987, before the statutory effective date of the interest provision.^{3/}

Accordingly, Mr. Faulkner's claim for interest is denied.



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General Counsel

^{3/} We have consistently held that a delay by the government in making payment to one of its employees does not create an entitlement to interest in the absence of a contract or statute creating such entitlement. See 68 Comp. Gen. 220, 221 (1989), and cases cited therein.