



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-237624

October 17, 1990

Mr. Frank A. Drake
Director
Department of Veterans Affairs
Domiciliary
White City, Oregon 97503

Dear Mr. Drake:

We refer to the claim for interest on settlements of employee claims for environmental differential pay (EDP) for prior asbestos exposure, your reference 692/05. The appeal was submitted through your office by Mr. [redacted] President, AFGE Local 1089, on behalf of himself and other present and former members of the bargaining unit.

The issue presented for our consideration was whether interest was due to the claimants on EDP claims under authority of the Back Pay Act, as amended in 1987. 5 U.S.C. § 5596(b) (1988). It was the union's contention, not concurred in by your office, that such interest payment was due, notwithstanding the fact that the employees involved had entered into "administrative settlement agreements" which did not provide for such payment.

As you are well aware there has been much correspondence in this case by all the parties concerned in order to develop all the facts necessary to reach a conclusion. In response to several issues raised by this Office, the Department's General Counsel, Raoul L. Carroll, concluded in his letter reply of August 2, 1990, that a Department facility director or designee is an appropriate authority to determine entitlement to backpay for EDP under the Back Pay Act. In addition, the General Counsel concluded that there is no legal authority other than the Back Pay Act, 5 U.S.C. § 5596, that would permit the Department to settle a claim for retroactive compensation. Thus, he concluded that the settlement agreements entered into by the White City claimants in connection with their entitlement to EDP for past service at the VA Domiciliary fall within the scope of the backpay authority. Since the agreements in question were entered into after the

effective date of the 1987 amendment to the Back Pay Act (December 22, 1987), he concluded that interest is due and payable on the settlement amounts in accordance with 5 U.S.C. § 5596(b) (2) (A).

We have no reason to question the determination made by the Department's General Counsel. An administrative change in the salary of a federal employee may not be made retroactively effective in the absence of a statute which provides for such a change. 40 Comp. Gen. 207 (1960); 39 Comp. Gen. 583 (1960). Prior to the passage of the Back Pay Act in 1966, this Office allowed retroactive salary adjustments only where administrative errors deprived an employee of a right granted by statute or regulation, or resulted in a failure to carry out nondiscretionary administrative regulations or policies. 34 Comp. Gen. 380 (1955); 21 Comp. Gen. 369 (1941).

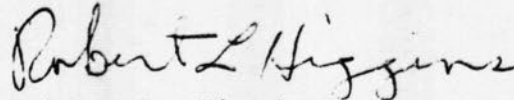
With the passage of the Back Pay Act in 1966, however, we recognized that since 5 U.S.C. § 5596 provides broad statutory authority to rectify erroneous personnel actions by providing backpay to employees injured by such actions, it effectively covered those cases which previously could only be handled under our administrative error exceptions to the prohibition against retroactive salary payments. Also, we have held that instances involving unjustified or unwarranted personnel actions are taken outside of the rule against retroactivity by the Back Pay Act of 1966, and we would apply those standards in the future. [redacted], 55 Comp. Gen. 836, 838 (1976).

The wage grade employees in this case are entitled to EDP as long as certain conditions are met under the provisions of 5 U.S.C. § 5343(c) (4) (1988), and FPM Supplement 532-1, Appendix J. Once it is determined that they are so entitled, the authority for retroactive reimbursement stems from the language of the Back Pay Act. The Act refers to pay, allowances, or differentials the employee normally would have earned during the period if the personnel action had not occurred. 5 U.S.C. § 5596(b) (1) (A) (1) (1988).

Since interest is now due and payable by statute for backpay claims entered into after December 27, 1987, and the only authority for retroactive payment is under the Back Pay Act we agree with the Department's General Counsel that the payment of interest is appropriate under the circumstances in this case.

Accordingly, since the Department has agreed to reimburse the employees for interest, we are closing our file on this matter.

Sincerely yours,



Robert L. Higgins
Associate General Counsel

cc: Mr. Ronald W. Duncan
President, AFGE Local 1089
Post Office Box 2546
White City, Oregon 97503

Mr. Richard Hahn
Personnel Officer (05)
Department of Veterans Affairs
Domiciliary
White City, Oregon 97503

Mr. Michael P. McCarthy
Assistant District Counsel
Office of District Counsel
Department of Veterans Affairs
1220 SW Third Avenue
Portland, Oregon 97204

Raoul L. Carroll
General Counsel
Office of the General Counsel
Department of Veterans Affairs
Washington, D.C. 20420

Angela Prudhomme, Esq.
Office of the General Counsel
Department of Veterans Affairs
Mail Stop 0230
810 Vermont Avenue, NW
Washington, D.C. 20420