



United States  
General Accounting Office  
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Office of the General Counsel

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March 22, 1989

Alan Dockterman, Esq.  
Holland and Dockterman  
1513 King Street  
Alexandria, Virginia 22314

Dear Mr. Dockterman:

We refer to your letter of October 6, 1988, written on behalf of Mr. \_\_\_\_\_, in which you renew your request that we review our Claims Group Settlement Z-2851884, July 3, 1984, and reconsider Mr. \_\_\_\_\_ entitlement to severance pay. That settlement sustained the Department of the Navy's action disallowing such pay based on the Navy finding that Mr. \_\_\_\_\_ separation was due to his inability to perform his assigned tasks - inefficiency.

The facts are that Mr. \_\_\_\_\_ was indicted by a federal grand jury on three counts of willful and deliberate federal income tax evasion for the years 1976, 1977, and 1978. He pled guilty to the charge for the year 1978, and on July 9, 1982, he was sentenced to 2 years in prison (actual confinement - 60 days), supervised probation for 3 years, a \$5,000 fine, and 100 hours of community service. As a result of that conviction, his employer, the Department of the Navy, revoked his security clearance. Since there were no nonsensitive positions available to him, Mr. \_\_\_\_\_ was discharged from federal service on June 15, 1983.

Mr. \_\_\_\_\_ filed a challenge to that action with the Merit Systems Protection Board (MSPB). The issues considered by the MSPB were whether Mr. \_\_\_\_\_ security clearance should have been revoked and whether the basis for discharge-- inability to perform assigned tasks - inefficiency--was proper. Based on its examination of all the evidence, the MSPB sustained the agency finding that a nexus existed between Mr. \_\_\_\_\_ conviction of the off-duty crime and revocation of his security clearance. The Board also concluded that since there were no other nonsecurity clearance positions available, his removal promoted the

efficiency of the federal civil service and was proper.<sup>1/</sup>  
Those findings by the MSPB were affirmed by the United  
States Court of Appeals for the Federal Circuit on  
August 17, 1988.<sup>2/</sup>

Notwithstanding the above, you argue that Mr.            should  
receive severance pay because the reason for his separation,  
i.e., loss of security clearance, is not an event described  
in 5 U.S.C. § 5595(b) as constituting cause. Further, you  
point out that had Mr.            position not required a  
security clearance he would not have been dismissed from  
federal service.

The statute governing severance pay clearly precludes  
payment to an employee who is removed for cause on charges  
of misconduct, delinquency, or inefficiency. 5 U.S.C.  
§ 5595(b)(1). The court opinion you cited, Sullivan v.  
United States, speaks to the issue of what constitutes an  
involuntary separation when an employee is removed from the  
federal service at the expiration of a limited-term  
appointment.<sup>3/</sup> The court in Sullivan does not suggest that  
there is any discretion with regard to the payment of  
severance pay to individuals removed for cause. In view of  
the ruling of the MSPB and the Court of Appeals for the  
Federal Circuit, it is our position that the finding of  
inefficiency is reasonably based. Therefore, we conclude  
that the action of our Claims Group disallowing Mr.  
claim for severance pay is proper.

Sincerely yours,



Robert L. Higgins  
Associate General Counsel

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<sup>1/</sup> MSPB Docket No. DC07528310774, initial decision,  
Oct. 13, 1983, affirmed as modified, July 12, 1984.

<sup>2/</sup> Brandt v. Department of the Navy, No. 85-542, slip op.  
at 3 (Fed. Cir. Aug. 17, 1988).

<sup>3/</sup> 4 Cl. Ct. 70 (1983); aff'd, 742 F.2d 628 (Fed. Cir. 1984).