

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-180206

DATE: JUL 16 1974

40945
95245

MATTER OF: Retroactive payment of environmental differential

DIGEST:

Although agency did not determine that duties performed by certain prevailing rate employees involved a hazard listed in appendix J of FPM Supplement 532-1 for which environmental differential pay is required until some time after the effective date of the differential, payment may be made from effective date of the differential since assignments before and after determination of entitlement were similar and since reasonable estimates of the amounts due may be made on the basis of records of actual entitlement for the 5-month period for which records are available.

This decision involves the propriety of certifying for payment to certain prevailing rate employees of the Department of the Army retroactive environmental differential pay for the period of November 1, 1970, through August 26, 1972.

To implement the environmental differential pay plan in accordance with Federal Personnel Manual (FPM) Letter No. 532-17, August 5, 1970, the Position and Pay Management Division of the Army Civilian Personnel Office, Hawaii, conducted a survey of the local work situations at Army installations in Hawaii shortly after receiving FPM Letter No. 532-17. On the basis of this survey, it was determined that none of the work situations in Hawaii met the criteria of section S8-7 of FPM Supplement 532-1 for environmental differential pay. However, it was subsequently determined that certain employees working in the Storage Section of the Munitions Division were entitled to environmental differential pay for the hazard listed in appendix J of FPM Supplement 532-1 as "Explosives and Incendiary Material-Low Degree Hazard." Accordingly, these employees have received a 4 percent environmental differential since August 1972.

Since the initiation of environmental differential pay for these employees on August 26, 1972, was not based on a change in their working conditions but on the reversal of the determination that they were not entitled to an environmental differential, the Department of the Army believes that these employees may be retroactively paid an environmental

differential from the effective date of the differential, November 1, 1970, through August 26, 1972. However, records of the actual time these employees were exposed to the hazard for which the differential is payable were not maintained. Thus, the Department of the Army has requested a decision as to the propriety of a formula for estimating the periods of time these employees were exposed to the hazard for the purpose of computing their entitlement. On the basis of a 5-month period (September 1972 through January 1973) for which records of exposure are available, the agency has established for each employee the percentage of total work days on which he was exposed to the hazard. To determine the amount of pay due each employee, the agency proposes to apply this percentage to the actual number of productive hours each employee was in a pay status for the period records of actual exposure are unavailable. The actual number of productive hours in pay status for each employee was obtained from agency time and attendance reports for the period in question.

Section 58-7f of FPM Supplement 532-1 requires an agency to pay a prevailing rate employee the environmental differential specified when he performs assigned duties which expose him to a hazardous condition listed in appendix J on or after the effective date for the particular differential. Since this provision is mandatory, an employee who performs assigned duties involving a hazard listed in appendix J of FPM Supplement 532-1 would be entitled to the applicable differential for the performance of such duties on or after the effective date of the differential regardless of when the agency actually identifies these duties as being duties for which an environmental differential is payable. B-163901, May 2, 1973, and B-170182, December 26, 1973. Inasmuch as the Department of the Army has determined that the employees involved perform assigned duties involving a hazard listed in appendix J and that they have been performing such duties since the effective date of the differential, they are entitled to retroactive environmental differential pay from the effective date of the differential, November 1, 1970.

Regarding the unavailability of records indicating the actual periods the employees were exposed to the hazard for purposes of entitlement to the differential, it has been held that where it is known that over a period of time employees have performed duty for which they are entitled to additional pay and doubt exists only as to the particular days or hours on which the qualifying work was performed, payment may be based upon the most reasonable estimate after consideration of all available records. B-170182, *supra*. Also, it has been held that reasonable estimates of the amount of additional pay due for periods where records indicate that the

type of work in question was performed but do not identify specific employees or the amount of work performed by them may be based on substantial evidence during periods when amounts claimed were verified. B-150646, B-178272, October 10, 1973. Since the Department of the Army states that the working conditions were similar between the verified period and the unverified period and time and attendance records are available for the unverified period, the proposed formula for estimating the amounts due for the unverified period is proper provided it is modified as indicated below.

Under the formula proposed, the Department of the Army would determine the number of hours for which the differential is payable to each employee by applying the percentage of workdays they were exposed to the hazard during the verified period against the number of productive hours each employee was in a pay status during the unverified period. It appears that the number of productive hours each employee was in a pay status refers to the total number of hours each employee performed his assigned duties during the period and thus excludes any periods an employee was in a paid leave status. However, where, as in the present case, the environmental differential involved is authorized under part II of appendix J, FPM Supplement 532-1, the agency is required to pay an employee the differential for all hours he is in a pay status on the days he is exposed to the situation for which the differential is authorized. Section 58-7j(1), FPM Supplement 532-1. In this regard payment of the differential for all the hours the employee is in a pay status on days he is exposed to the hazard would include payment for any hours he is in a paid leave status on such days. Accordingly, the percentage of exposure established by the Army should be applied to the number of days—including days on which each employee was in a paid leave status for part of the day, but excluding full holidays or full days in a paid leave status—the employee performed his assigned duties during the period of the claim. The number of days established by this procedure should then be multiplied by the average number of hours per day each employee was in a pay status during the period to determine the total number of hours each employee is entitled to the environmental differential. However, if existing agency records do not permit a determination of each employee's entitlement in the above manner, the formula proposed by the Department of the Army would represent the most reasonable estimate of the amount of environmental differential pay due each employee. Therefore, the proposed formula may be used in those circumstances.

R.F.KELLER

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