

**DOCUMENT RESUME**

02571 - [A: 755]

[Backpay for Periods of Separation from Service]. B-188825. June 10, 1977. 3 pp. + enclosure (1 pp.).

Decision re: Roselyn S. Hamilton; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (305).

Organization Concerned: Department of the Air Force: Malmstrom AFB, MT; Department of the Air Force; Department of the Air Force: Whiteman AFB, MO; Civil Service Commission.

Authority: Freedom of Information Act (5 U.S.C. 552). 5 U.S.C. 5596(b). 5 U.S.C. 7501. 5 C.F.R. 752.203. B-181583 (1974). Dabney v. Freeman, 358 F.2d 533 (D.C. Cir. 1965). Goodman v. United States, 358 F.2d 532 (D.C. Cir. 1966).

Francis L. Swisher appealed the disallowance of his client's claim for backpay for two periods of separation from service with the Air Force occasioned by her request that she be reassigned to a more sedentary position. The disallowal was sustained as there was no finding that separation was unjustified or unwarranted nor that resignation was involuntary. (QM)

Susan Caplan  
Civil P. 16.

2755  
02571

**DECISION**



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

**FILE: A-188825**

**DATE: June 10, 1977**

**MATTER OF: Roselyn S. Hamilton - Backpay for periods of  
separation from service**

- DIGEST:**
1. Civilian employee's claim for backpay for two periods of separation from service with Air Force is disallowed since there has been no finding by appropriate authority that separation was unjustified or unwarranted.
  2. Civilian employee's claim for backpay for period of separation from service with Air Force following her resignation is disallowed until there is finding by appropriate authority that resignation was involuntary.

This action is in response to a letter dated March 16, 1977, from Mr. Francis L. Swisher, written on behalf of Mrs. Roselyn S. Hamilton, appealing the certificate of settlement Z-2608883 dated January 31, 1977, issued by our Claims Division, which disallowed Mrs. Hamilton's claim for backpay for the period August 5, 1972, through September 17, 1973.

Mrs. Hamilton was employed at Whiteman Air Force Base, Missouri, from June 8, 1971, until August 5, 1972, as a Sales Store Checker grade GS-3. The record indicates that due to a physical disability previously incurred while employed with the Air Force, she requested reassignment to a more sedentary position. On February 25, 1972, Mrs. Hamilton was removed from duty status on the basis that there was no position available for which Mrs. Hamilton qualified which was more sedentary than her assigned position as Sales Store Checker. By letter dated March 7, 1972, Mrs. Hamilton was directed to return to work since Colonel M. D. Wolst, Jr., Commander, U.S. Air Force Hospital, Whiteman AFB, determined "that in his opinion you are physically qualified to perform all the duties of a Sales Store Checker." The letter also stated that Mrs. Hamilton would be considered for all vacancies that became available for which she qualified. Mrs. Hamilton returned to work on March 8, 1972.

By July 18, 1972, Mrs. Hamilton had not yet been transferred to another position at Whiteman Air Force Base. Therefore, she resigned from her position at Whiteman on July 18, 1972, effective August 5, 1972. There is a factual dispute between Mrs. Hamilton

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and the Air Force as to the reasons for her resignation. The SF Form 50 on file shows that Mrs. Hamilton "Resigned to further education." The record also indicates that on September 7, 1972, Mrs. Hamilton filed a grievance based on the Air Force's failure to transfer her to a clerical position. Her complaint was apparently denied on the grounds that she did not file the grievance within the 15-day time limitation.

Mrs. Hamilton relocated in Great Falls, Montana, upon her husband's transfer and was approved for reassignment as a Procurement Clerk at Kalstrom Air Force Base on November 16, 1973. She is presently employed in that capacity.

The record indicates that Mrs. Hamilton's representative filed two claims for backpay with the Civil Service Commission (CSC) in August, 1975 for her two periods of unemployment while residing in Missouri: February 24 through March 7, 1972, and August 5, 1972, through September 17, 1973. However, the record does not include any indication of a response from the CSC on either claim.

The entitlement to backpay is governed by 5 U.S.C. § 5596(b) (1970) which provides in pertinent part that:

"(b) An employee of an agency who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority under applicable law or regulation to have undergone an unjustified or unwarranted personnel action that has resulted in the withdrawal or reduction of all or a part of the pay, allowances, or differentials of the employee—

"(1) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect an amount equal to all or any part of the pay, allowances, or differentials, as applicable, that the employee normally would have earned during that period if the personnel action had not occurred \* \* \*."  
(Emphasis added.)

The appropriate authority to make a finding of an unwarranted personnel action initially is the employee's agency, with the

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right to appeal to the CSC. Matter of Warren J. Payne, Sr., B-181583, December 23, 1974. The CSC has the function of hearing and deciding appeals which assert wrongful separation from Federal service. 5 U.S.C. § 7501 (1970); 5 C.F.R. Part 752.203 (1972); Dabney v. Freeman, 358 F.2d 533 (D.C. Cir. 1965); Goodman v. United States, 358 F.2d 532 (D.C. Cir. 1966).

Therefore, unless the appropriate authority, i.e., the agency or the CSC, finds that Mrs. Hamilton has undergone an unjustified or unwarranted personnel action, i.e., wrongful separation from Federal service, Mrs. Hamilton is not entitled to backpay. Accordingly, we sustain the action of our Claims Division in disallowing her claim.

Mrs. Hamilton's representative has alleged that the Air Force discriminated against Mrs. Hamilton in violation of the equal employment opportunity laws for handicapped employees. Where an adverse action has been taken against an employee this is a matter for consideration between the employee and the agency where he is employed. The employee is entitled to appeal an adverse action to the CSC. The decision of the office of the CSC having appellate jurisdiction is final and not subject to review by the General Accounting Office. 5 C.F.R. § 752.203(b).

Mrs. Hamilton's representative has requested that this Office furnish him certain documents containing information regarding Mrs. Hamilton's employment at Whiteman Air Force Base. Mr. Swisher may request Air Force documents by filing a request with the Air Force under the Freedom of Information Act, 5 U.S.C. § 552 (Supp. IV, 1974). Per his request we are forwarding to Mr. Swisher a copy of each document he has sent to our Office.

*R. F. Kellm*  
Deputy Comptroller General  
of the United States

Susan Caplan  
Civ. Pers.

UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

*Memorandum*

TO : Director, Claims Division

June 10, 1977

FROM : Deputy  
Comptroller General *R. F. Kottu*

SUBJECT: Roselyn S. Hamilton - Claim for backpay for two  
periods of separation from service - B-188875-O.M.

Returned herewith is file Z-2608883, forwarded for our consideration  
April 12, 1977, in connection with Mrs. Hamilton's appeal of your  
disallowance of her claim for backpay during two periods of separation  
from service with the U. S. Air Force.

By decision of today, copy attached, we sustain your disallowance.

Attachments