



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

RELEASED



OFFICE OF GENERAL COUNSEL

IN REPLY  
REFER TO: B-191328(BRP)

April 3, 1978

Dear Mrs.

We refer to your letter of February 16, 1978, in which you request an investigation into your reinstatement at the General Schedule (GS) 5, step 1, grade level by the Department of the Army. We have also received a letter of recommendation dated February 16, 1978, from James O. Ealey, Sergeant First Class, Noncommissioned Officer in Charge, Department of Radiology, Walson Army Hospital, in which he requests that this Office review the matter and make a prompt and just decision.

Briefly summarized, you state that you worked as a Medical Radiology Technologist, GS-6, from February 1967 to November 1975. In June 1976, you applied for reinstatement to a position in the Department of Radiology that was vacant at that time. However, you report that this position was filled by a person with no prior civil service experience and you were informed that your paperwork had been misplaced. You were asked and did take a position as a Receptionist Clerk, GS-3, but your pay scale was not adjusted, as promised.

In July 1976, you state that you returned to the Department of Radiology as a GS-5. However, you were given the lowest possible starting pay which was GS-5, step 1. You feel that the salary you are receiving is far too low for your years of experience in radiology. Sergeant Ealey states that you have all of the ability and technical competence desired of any medical radiology technologist and are functionally efficient in all aspects of the operations of the department.

Our authority to render decisions is limited to matters presented by heads of departments and agencies, disbursing and certifying officers, and to claimants who have filed monetary claims with our Office. 31 U.S.C. §§ 74 and 82d. However, we hope that the following information will be of assistance to you in this matter.

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Title 5, United States Code, section 5334(a) provides, in pertinent part:

"The rate of basic pay to which an employee is entitled is governed by regulations prescribed by the Civil Service Commission in conformity with this subchapter and chapter 51 of this title when--

\* \* \* \* \*

"(4) he is reinstated, reappointed, or reemployed in a position to which this subchapter applies following service in any position in the legislative, judicial, or executive branch \* \* \*."

The implementing regulation of the Civil Service Commission, section 531.203(c), title 5, Code of Federal Regulations, provides, with certain exceptions not here relevant, as follows:

"\* \* \* when an employee is reemployed, transferred, reassigned, promoted, or demoted, the agency may pay him at any rate of his grade which does not exceed his highest previous rate; however, if his highest previous rate falls between two rates of his grade, the agency may pay him at the higher rate. \* \* \*"

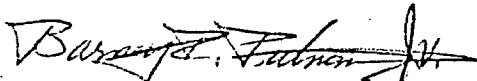
This Office has consistently held, in accordance with the aforesaid law and regulation, that upon reemployment, an employee has no vested right to receive the highest salary rate previously paid to him, and it is within the administrative discretion to fix the initial salary rate at the minimum salary of the grade to which appointed. In filling positions by reappointment of former Federal employees, in the absence of administrative policy, practice, or regulation requiring appointment at the highest salary previously attained in the Federal service, and absent a showing of administrative error in fixing the initial salary rate, there is no authority to change the pay rate either retroactively or prospectively. 54 Comp. Gen. 310 (1974); 39 Comp. Gen. 550 (1960); 34 Comp. Gen. 380 (1955); 31 Comp. Gen. 367 (1952); id. 15 (1951); Matter of Carolyn K. Kunselman, B-186496, September 3, 1976; B-177647, April 18, 1973; B-173815.09, February 2, 1973; B-177195, December 14, 1972; and B-174020, February 3, 1972, copies enclosed.

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Based upon the facts and circumstances as reported in the letters submitted by you and Sergeant Ealey, it would appear that the fixing of your rate of basic pay by the Department of the Army at the minimum salary of the grade (GS-5) to which you were appointed, was in accordance with the applicable law and regulation.

Sincerely yours,



Barney R. Putnam, Jr.  
Attorney-Adviser  
Civilian Personnel Law

Enclosures