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DECISION

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

FILE: B-196686 DATE: January 17, 1980

MATTER OF: Barbara S. McCoy - Claim for Retroactive Salary Adjustment

DIGEST:

1. Civilian employee of Department of Navy, hired in July 1973, as grade GS-2, step 1, claims retroactive salary adjustment for purpose of matching her previous salary as grade GS-5, step 6, employee of U.S. Post Office. Claim is denied since an employee has no vested right upon transfer or reemployment to receive the highest salary rate previously paid to her. It is within agency's discretion to implement highest previous rate rule, and that determination will not be overturned in the absence of administrative error. See 54 Comp. Gen. 310 (1974).

2. Employee, whose claim for retroactive salary adjustment was denied by Claims Division, questions whether GAO thoroughly investigated and interviewed certain witnesses in connection with claim. GAO does not conduct adversary hearings or interview witnesses but adjudicates claim based upon review of written record. 4 C.F.R. § 31.7. Burden of proof is on the claimant to establish the liability of the United States and the claimant's right to payment.

This decision is in response to the appeal of Ms. Barbara S. McCoy of our Claims Division settlement dated August 13, 1979, denying her claim for retroactive salary adjustment. For the reasons which follow we are sustaining the Claims Division's adjudication.

Ms. McCoy was hired on July 22, 1973, by the Naval Ship DLG01414 Engineering Center (NAVSEC) as a grade GS-2, step 1, at a rate of $5166 per annum. She had previously been employed by the U.S. Post AGC00052 Office as a grade GS-5, step 6, at a rate of $7777 per annum, until she left that position on April 16, 1971. Ms. McCoy contends that she was entitled to have her previous salary "matched" by NAVSEC because, as she alleges, the department was matching the previous

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salaries of other new employees. The record indicates that NAVSEC denied Ms. McCoy's claim finding that no error was made in 1973 in fixing Ms. McCoy's rate of pay because the action was in accordance with agency instructions and a discretionary pay setting policy existing at that time. Our Claims Division concluded that Ms. McCoy had no vested right upon reemployment to receive the highest salary rate previously paid to her and that the agency had the discretion to fix her initial salary rate at the minimum salary of the grade to which she was appointed.

In addition to her request for reconsideration of the Claims Division's settlement, Ms. McCoy contends on appeal that our Claims Division did not thoroughly investigate her claim or interview witnesses who could have established that previous salaries of other new employees at NAVSEC were being matched.

Under the authority of 5 U.S.C. § 5334(a) (1970) and 5 C.F.R. § 531.203(c), when an employee is reemployed, transferred, reassigned, promoted, or demoted, an agency may pay her at any rate of her grade which does not exceed her highest previous rate. In this regard our Office has consistently held that an employee has no vested right upon transfer or reemployment to receive the highest salary rate previously paid to her. See Clifton A. Russell, B-186554, December 28, 1976, and cases cited therein. It is within the agency's administrative discretion to fix the initial salary rate at the minimum salary of the grade to which appointed. 31 Comp. Gen. 15 (1951). In addition, the entitlement of an employee to receive pay in her new position based on her highest previous rate is discretionary with the agency and subject to agency regulations. Edward F. Slibowski, B-192890, January 10, 1979.

Under Navy regulations in effect at the time of Ms. McCoy's reemployment, use of the employee's highest previous rate was to be discretionary and not "automatic." See Civilian Manpower Management Instruction 531, S2-4 (October 31, 1968). It appears that in 1973 NAVSEC decided not to use the employee's highest previous rate for persons hired for clerical positions because of the abundance of persons seeking those jobs. Where, in accordance with the discretionary provisions of its regulations implementing the highest previous rate rule, an agency sets an employee's rate of compensation at a rate below the highest previous rate, there may be no retroactive adjustment of the rate of compensation in the absence of administrative error. 31 Comp. Gen. 15, supra, and Crystal Greaser Sharp, B-190257, September 13, 1978. In the present case, administrative error would be found only where the agency's action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. See 54 Comp. Gen. 310 (1974). There is no evidence of administrative error in this case.

Ms. McCoy has not submitted any additional evidence supporting her claim, nor has she set forth the errors which she believes were made in the Claims Division settlement. See 4 C.F.R. § 32.2 (1970). We have reviewed the Claims Division's settlement of Ms. McCoy's claim, and we find no basis on which to overturn that determination.

In regard to Ms. McCoy's question concerning the extent of our investigation and whether we interviewed certain individuals in connection with the adjudication of her claim, we should point out that under our claims procedures contained in part 30 of title 4, Code of Federal Regulations, our Office does not conduct adversary hearings or interview witnesses. Rather, we consider claims on the basis of the written record only, and the burden of proof is on the claimants to establish the liability of the United States and the claimants' right to payment in accordance with section 31.7 of title 4, Code of Federal Regulations.

Accordingly, there remains no legal basis on which this Office may allow any portion of Ms. McCoy's claim, and we sustain the disallowance of her claim by our Claims Division.

Milton J. Socolar

For the Comptroller General
of the United States