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DECISION



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

FILE: B-197142

DATE: February 12, 1980

MATTER OF: Cecil C. Frederici
[Review of Disallowance of Environmental Differential Pay]

DIGEST: Employees in the Plating and Anodizing Shop at an Army aeronautical depot maintenance center claim entitlement to environmental differential pay due to exposure to hazardous and harmful chemicals. Agency maintains that protective measures have practically eliminated the hazard, physical hardship, or working conditions. Authority to determine whether employees meet the qualifications for payment of environmental differential pay is primarily vested in agency concerned. GAO will not substitute its judgment for the agency's in the absence of clear and convincing evidence that the agency's determination was arbitrary and capricious.

This action is in response to an appeal of a settlement of our Claims Division dated August 30, 1979, which disallowed a claim for environmental differential pay. The issue presented is whether the determination made by the employing agency, the United States Army, that the employees do not meet the criteria to establish entitlement to environmental differential pay was in error. Determination of qualification for environmental differential pay is primarily vested in agency concerned and GAO will not substitute its judgment for the agency's in the absence of clear and convincing evidence that the agency's determination was arbitrary and capricious.

Mr. Cecil C. Frederici, an employee of the Corpus Christi Army Depot, Texas, for himself and other employees similarly situated has made a claim for environmental differential pay based upon exposure to toxic chemicals in the performance of his work. It appears that an environmental differential pay was authorized for the employees of the anodizing shop at the Army Aeronautical Depot Maintenance Center in

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Corpus Christi, Texas, until March 13, 1977. The environmental differential pay was terminated as the result of a letter dated January 27, 1977, from the Civil Service Commission amending Appendix J of the Federal Personnel Manual, Supplements 532-1 and 532-2, to specify that effective March 13, 1977, an environmental differential is payable for certain categories of work only when protective measures have not practically eliminated the hazard, physical hardship, or working conditions of an unusually severe nature. A determination was thereafter made by the Army that by the use of certain protective clothing and safety devices the hazardous conditions had been practically eliminated. Mr. Frederici maintains that the agency determination was inaccurate.

Authority for payment of environmental differential pay is contained in Federal Personnel Manual (FPM) Supplement 532-1, Instruction 14. Subchapter S8-7 provides authority for the payment of environmental differentials for exposure to various degrees of hazards, physical hardships, and working conditions of an unusually severe nature. Appendix J of FPM 532-1, Instruction 14, effective March 13, 1977, provides for an 8 percent wage differential for working with or in close proximity to poisons (toxic chemicals other than tear gas or similar irritating substances) in situations for which the nature of the work does not require the individual to be in direct contact with, or exposure to, the more toxic agents as in the case with the work described under high hazard for this class of hazardous agents and wherein protective devices and/or safety measures have not practically eliminated the potential for personal injury.

The authority to determine whether the assigned duties of an employee involve situations for which environmental differential is authorized is vested primarily in the agency concerned. This Office will not substitute its judgment for that of agency officials who are in a better position to investigate and

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resolve the matter, unless we find clear and convincing evidence that the agency decision was wrong or that it was arbitrary and capricious. See B-181498, January 30, 1975, and decisions cited therein. Our review of the record reveals that the Army had a basis for concluding that no environmental differential should be paid. Therefore the action taken cannot be characterized as arbitrary or capricious. See also, B-194289, June 27, 1979.

In view of the above, the disallowance of the claim by the Claims Division is sustained.



Deputy Comptroller General
of the United States