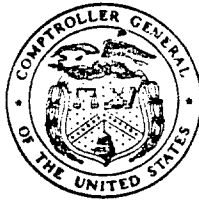


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DECISION



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

FILE: B-200742

DATE: September 29, 1981

MATTER OF: Eleanor H. Jackson - Retained Pay

DIGEST: An employee who applied for and accepted a lower-grade position in effect requested a demotion, thereby disqualifying herself from retained pay under 5 U.S.C. 5337 (1970). She did not meet her burden of establishing her claim with evidence that her demotion was initiated by her agency because it was primarily for the benefit of the agency to meet a special recruitment need or was part of a formal, systematic employee development program involving training to upgrade the agency's work force.

Ms. Eleanor H. Jackson, a former employee of the Navy's Aviation Supply Office, Philadelphia, Pennsylvania, requests salary retention under 5 U.S.C. 5337 (1970) because her demotion to a lower grade reduced her salary. Our Claims Group by settlement certificate Z-2729554, January 4, 1979, denied her claim, since she had initiated the demotion and her reassignment to a lower-grade position did not appear to be a part of a formal training program primarily for the benefit of the Navy. We agree with the Claims Group that she has not proved her entitlement to retained pay.

Ms. Jackson worked as a Supply Cataloger, GS-7, step 5, when the Naval Publications and Forms Center, under its merit promotion plan advertised an opening for the training position of Personnel Management Specialist, GS-5, with promotion to GS-7 after satisfactory completion of a 1-year training period. She applied and was selected for the position. Upon her reassignment to the position, the Center demoted her to GS-5, step 10, reducing her salary from \$10,261 to \$9,515 per annum, effective June 11, 1972. She successfully completed the 1-year training period and received a promotion to grade GS-7, step 5, Personnel Management Specialist, at \$10,788 per annum, effective June 10, 1973.

Under former section 5337, title 5, United States Code, retained pay for a General Schedule employee extended for 2 years after reduction in grade meeting the requirements of that section. One requirement was that the reduction in grade not be "at his [the employee's] request." The

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Civil Service Commission has provided examples of actions not considered to be initiated by the employee, one of which is:

"--A demotion or reassignment of an employee as a part of an employee development program in order to provide him with a specific type of experience necessary to his further development."

Federal Personnel Manual (FPM) Supplement 990-2, Book 531, Subchapter S5-4d(2)(b)(iv), July 30, 1965 (Revised July 1969).

The Civil Service Commission's views on what constitutes employee-initiated demotions are fully set forth in our decision, Faye Abu-Ghazaleh, 56 Comp. Gen. 199 (1976). Among other things, the Commission said:

"When a demotion is initiated by the agency for the primary benefit of the agency, it is not taken at the employee's request even though the employee may have applied through merit promotion procedure * * *. On the other hand, if the demotion is initiated by the employee for his personal advantage (e.g. dissatisfaction with present employment, unable to perform duties), salary retention is inappropriate. * * * In order to deny salary retention, it must be established that the agency does not have a special recruitment need, and that this is not in fact the paramount factor leading to the downgrading."

Further in defining an employee development program involving a demotion justifying retained pay under 5 U.S.C. 5337 the Commission stated:

"Employee development programs encompass the formal training programs, in connection with which the agencies usually have written career plans, training agreements, and so-called 'career promotions' without further recourse to merit promotion vacancy announcements. Upward Mobility Programs, Apprentice

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Training Programs, and Intern Programs are some of the more common development programs. They are programs which are initiated by the agency primarily to benefit the agency, in that they offer training and experience which aid in the development of the workforce or otherwise meet the agency's need to develop a reservoir of trained persons with skills and knowledges essential to the agency's mission."

Volunteering for a lower-grade "career-ladder" position involving some job training but without a well-defined formal training program of a scope and purpose similar to that of the Upward Mobility Programs, Apprentice Training Programs, and Intern Programs, does not justify retained pay based upon demotion for entry into an employee development program.

By letter of July 14, 1977, the Office of Civilian Personnel, Department of the Navy, advised the Aviation Supply Office (which apparently succeeded the Naval Publications and Forms Center as Ms. Jackson's employing office) that a trainee or developmental position must be part of a formal Civil Service Commission approved program in order to warrant retained pay. While we do not agree that a development program must necessarily have been approved by the Civil Service Commission in order to qualify employees for retained pay, the program must be a systematic program for training established primarily to fill an agency need.

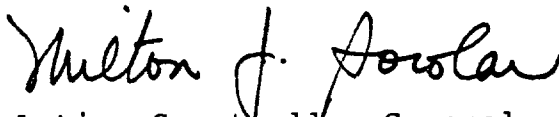
In William T. Schaefer and Hillard N. Vance, B-186008, May 22, 1978, we denied retained pay because the record contained no evidence that the employing office had a special recruitment need or that training in the lower-grade position was part of an employee development program such as existed in Faye Abu-Ghazaleh, cited above. There, the employee accepted the demotion with the understanding that systematic training would be given in a new career field with greater promotion potential.

We have no evidence that Ms. Jackson participated in a systematic and formal program such as that involved in Faye Abu-Ghazaleh. Section 31.7, Title 4, Code of Federal Regulations, provides that the burden is on the claimant to establish the liability of the United States. Ms. Jackson has not established her claim with the necessary evidence.

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Ms. Jackson states that the Aviation Supply Office provided retained pay to other employees under FPM Letter 531-49, October 13, 1976, which reminded Federal agencies that employees demoted to positions for Upward Mobility Programs were entitled to retained pay. Also, the Aviation Supply Office informed her that the cut-off date for payment under FPM Letter 531-49 was 1973. We note, however, that she did not participate in an Upward Mobility Program when she accepted the lower-grade position. Further, our records indicate that the Aviation Supply Office now understands that there was no cut-off date in 1973 and that there would be no bar to retroactive payment if she were otherwise entitled to retained pay.

On the present record we must deny the claim. Our Claims Division's disallowance of retained pay is sustained.



Acting Comptroller General
of the United States