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**DECISION**

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

**FILE:** B-201775

**DATE:** August 3, 1981

**MATTER OF:** Albert D. Minear

**DIGEST:** Employee who held GS-13 position with Internal Revenue Service transferred to GS-12 position with Small Business Administration after receiving notice his GS-13 position was to be abolished. Employee is not entitled to grade and pay retention since he was not placed in lower-grade position as result of formal reduction-in-force procedures but rather he voluntarily accepted downgraded position to avoid possible reduction-in-force procedures.

Mr. Albert D. Minear appeals our Claims Group's denial of his [claim for grade and pay retention] when instead of accepting a lower-grade position with his employing agency due to the impending abolishment of his position, he voluntarily accepted a lower-grade position with another agency. Since Mr. Minear was not placed in the lower-grade position as a result of reduction-in-force (RIF) procedures instituted by his employing agency, he is not entitled to the grade and pay retention.

Mr. Minear was serving in the position of Chief, Field Branch, for the Des Moines District of the Internal Revenue Service. This was a GS-13 position. Sometime in early 1976, the claimant was advised that his position was to be abolished and its functions would then be performed by his supervisor. Later, the claimant received a memorandum dated July 30, 1976, from A. G. Fercucci, Chief, Collection Division, Des Moines District, which stated in pertinent part:

"This memo is to confirm recent discussions relative to the Service's decision to abolish the position of Chief, Field Branch in our District.

"The alternative opportunities that would be available for your continued employment in Internal Revenue Service upon the abolishment of your position include:

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- "1. The position of Group Manager, GS-1169-12, Collection Division, Group #1, in the Des Moines District; Duty Station - Des Moines.
- "2. Special Agent, GS-1811-11, Intelligence Division, Des Moines District; Duty Station - Des Moines.

"We are in a position at this time to offer you either of the above alternatives. Of course, if you were to select either of the two alternatives mentioned above, you would be entitled to retention of your present salary for a two-year period beginning with the date on which you leave your present position."

Subsequently, on August 16, 1976, the Internal Revenue Service issued "Redeployment Guidelines" which indicated that the incumbents of Chief, Field Branch, positions were to be reassigned by December 31, 1977. The guidelines also indicated that problems involved in the abolishing of that position were anticipated to be resolved through reassignment and attrition. The Internal Revenue Service, however, recognized that it might be necessary to resort to RIF procedures to determine placement for affected individuals.

Effective on February 26, 1977, Mr. Minear transferred to a GS-12 position with the Small Business Administration in the Des Moines District. Mr. Minear indicates that he accepted the position with the Small Business Administration rather than remain in his position with the Internal Revenue Service until it was abolished.

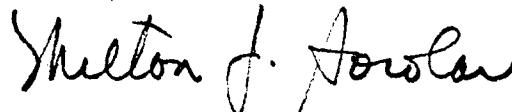
At the time of Mr. Minear's transfer to the GS-12 position, 5 U.S.C. § 5337 (1976) provided pay retention for an employee reduced in grade under certain conditions, and so long as he continued in the same agency and was not demoted or reassigned at his own request. Title VIII of the Civil Service Reform Act of 1978 amended title 5 of the United States Code to provide additional grade and pay retention for certain Federal employees who have been subject to reductions in grade as a result of grade reclassification actions or reductions in force. 5 U.S.C. §§ 5361-5366

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(Supp. III, 1979). A qualifying employee who is reduced in grade as the result of a RIF is entitled to retain his grade for 2 years and to retain his pay indefinitely thereafter, unless his entitlement ceases under prescribed conditions which no longer include remaining in the same agency. These provisions apply retroactively to certain employees whose demotions occurred on or after January 1, 1977, and prior to the first pay period beginning on or after January 1, 1979, under circumstances which would have entitled the employee to grade retention under 5 U.S.C. § 5362 (Supp. III, 1979). See section 801(b), Civil Service Reform Act of 1978, Pub. Law 95-454, 92 Stat. 1222-1223, and Richard J. Magner, 59 Comp. Gen. 311 (1980).

While it would appear that the precipitating factor in Mr. Minear accepting the lower-grade position with the Small Business Administration was due to the contemplated abolishment of his position by the Internal Revenue Service, this does not entitle him to grade and pay retention. The entitlement to grade and pay retention requires that an employee be placed in a lower-grade position as a result of RIF procedures. 5 U.S.C. § 5362(a)(1) (Supp. III, 1979); see John A. Thompson, B-197983, October 21, 1980. Thus, an employee's transfer to a lower-grade position with another agency so as to avoid possible RIF procedures does not come under the purview of the statutory entitlement. Rather, such action is deemed to be a transfer at the employee's request for his benefit, convenience, or personal advantage, and grade and pay retention is precluded. See 5 C.F.R. § 536.208. See also Thompson, supra, and Louis Rubinstein, B-198941, August 18, 1980.

Accordingly, Mr. Minear is not entitled to grade and pay retention and our Claims Group's disallowance of his claim is, therefore, sustained.



Acting Comptroller General  
of the United States