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DECISION

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

118332

FILE: B-202039 DATE: May 7, 1982

MATTER OF: Suggestion Award--Claim for Interest to Compensate Suggesters for Delay of Award--Reconsideration

DIGEST: Although Army became committed to compensate suggesters when Army implemented cost-saving suggestion, suggesters are not entitled to interest from the date their suggestion was implemented.

Mr. Vernon J. Lahay has requested that we reconsider our decision of April 3, 1981, in which we declined to add interest charges to a cash award which he and another Army employee had received in December 1980 for a cost-saving suggestion implemented in January 1977. The claimant asserts that the Army entered into a contract with him when it accepted and implemented his suggestion, that he was entitled to compensation under that contract when the suggestion was implemented, and that interest should therefore be calculated from that time until payment was made in 1980. While, upon reconsideration, we agree with Mr. Lahay that the Army was committed to make a cash award at the point at which it implemented his suggestion, we must still reject his claim for additional payment. Although Mr. Lahay was entitled to be compensated for his suggestion in accordance with Army Regulation 672-20, he is not entitled to have the sum adjusted by our Office to include interest on the award from the date his suggestion was implemented.

On August 25, 1976, Mr. Lahay and Mr. Delmar J. Rockemann submitted to the Army for evaluation the suggestion on which this claim is based. The suggestion, which involved data processing, was put into effect on January 1, 1977. On October 9, 1980, an award of $3,085 for resulting tangible benefits was approved, and Mr. Lahay and Mr. Rockemann received the award in December 1980. In their original claim to this Office, they sought additional payment to compensate them for losses which they attributed to imputed investment earnings, as well as inflation, for the 4-year period, January 1977 through December 1980. They also sought interest on the award and compensation to cover the losses suffered when they paid higher personal income tax in 1980. (They contended that, had the award been received in 1977, they would have paid less taxes on it due to their lower base incomes for that year.) We denied each of these claims in our decision, B-202039, April 3, 1981. Mr. Lahay seeks reconsideration of our denial of interest on his award from the date his suggestion was implemented.

Although the statutory provision upon which the Army Suggestion Program (AR 672-20 (ch. 2)) is based, 5 U.S.C. §§ 4501-4506 (1976 and Supp. III (1979)) (applicable to civilian employees) gives the Army discretionary authority to make cash awards, we agree with Mr. Lahay that the Army narrowed the range within which its discretion could be exercised when it promulgated its own regulations. These regulations, AR 672-20, paragraph 2-5(a), provide that:

> "* * * Cash awards will be granted for suggestions adopted wholly or in part, which result in tangible monetary savings, intangible benefits, or a combination of both, in accordance with the criteria contained in paragraphs 2-7 and 2-8.* * *" (Emphasis added.)

Paragraph 2-7 indicates that:

> "* * *(a) Cash awards for tangible monetary savings may be granted on the basis of actual or estimated savings (i.e. dollar benefits in the first year of implementation less offsetting costs of installation) as follows:
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> "(1) Actual dollar savings in terms of manhours or personnel spaces;
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> "(2) Extent of increased output at the same cost; or
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> "(3) Materials or other resources saved in specific terms.* * *
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> "(b) The amount of the cash awarded to eligible personnel for adopted suggestions in this category will be determined in accordance with the scale shown in table 2-1.* * * (Emphasis added.)
>
> "(c) Awards will be computed based upon the addition of savings at each successive level to all those previously recorded. The total award covering all adoptions is based on the scales in tables 2-1 and 2-2 appropriate to the total savings and benefits realized.* * *"

It is clear from the foregoing regulations that when the Army implemented the suggestion, it was committed to make an award. We do not believe, however, that describing this commitment as an implied contract is particularly helpful in understanding the nature of this commitment. Furthermore, although the amount of the award was not yet determined, the determination of the amount of the award was required to be made in accordance with the criteria set by the regulations. As the Court of Claims ruled in James R. Griffin, Jr. v. United States, 215 Ct. Cl. 710 (1978), when the Secretary of the Air

Force had published a manual setting forth the procedures for the submission and evaluation of, and the determination of appropriate compensation for, suggestions, he narrowed the area of discretion available to him to fix the amount of compensation.

In the case now before us, however, Mr. Lahay does not claim that the amount of his award was improper. He asks instead that interest be paid on the sum granted to compensate him and Mr. Rockemann for the delay between implementation of their suggestion and receipt of their award. We must again deny this claim, even assuming that the Army unreasonably delayed in making payment. As we stated in our previous opinion, interest may not be awarded against the United States unless it is expressly provided for by contract or its allowance is specifically directed by statute. B-189181, June 20, 1978; B-193346, March 20, 1979, and cases cited therein. Thus, even giving Mr. Lahay the benefit of the best case he might have--that his claim came into being in a sum certain when his suggestion was adopted--he is not entitled to interest on this claim.

We note, however, that we have considerable doubt as to whether a claim in an amount certain came into being when Mr. Lahay's suggestion was adopted. The regulations cited above provide a system within which administrative action is to take place. While this system of regulations circumscribes the amount of discretion available to the Army, it is premised on the existence of an administrative process that is to determine that a certain individual or individuals are responsible for the suggestion that was adopted, and more importantly in this case, to determine what the amount of the award should be. Accordingly, until final agency action, there was no sum upon which interest could be calculated. As payment was reasonably prompt upon completion of the administrative action by the Army, we do not believe interest would be owing in this case even if the Army were to be treated as an ordinary debtor. See Restatement of Restitution § 156 (1937); Restatement of Contracts (Second) § 354 (1979).

In conclusion, while we agree with Mr. Lahay that a commitment arose at the time at which the Army accepted and implemented his suggestion, our Office will not require that he be paid interest due to the delay in the payment of his award.

Milton J. Socolar

Acting Comptroller General
of the United States