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DECISION

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

FILE: B-205452 DATE: June 14, 1982

MATTER OF: Jimmie D. Brewer - Reconsideration - Continuation of Night Shift Differential

DIGEST: 1. A former Air Force Wage Grade employee requests reconsideration of the Comptroller General's Decision of March 15, 1982, which denied his claim for night differential on the grounds that he had not presented evidence that his assignment from the swing shift to the day shift was temporary for purposes of continuing entitlement to night differential. Claimant's submission of injury report which contains supervisor's notation that he was on loan is not of sufficient probative value to permit payment of claim.

2. Claimant's allegation that Air Force Regulation was violated because he was assigned to position which had duties exceeding limitations placed on his physical activity provides no basis for payment since claimant has not shown that the action, even if found to be improper, resulted in withdrawal or denial of pay.

Mr. Jimmie D. Brewer has requested that we reconsider our decision B-205452 of March 15, 1982, by which we denied his claim for night shift differential.

Mr. Brewer, a former Wage Grade employee at Tinker Air Force Base in Oklahoma, bases his claim on Federal Personnel Manual (FPM) Supplement 532-1, Subchapter S8-4c(3), which provides that a Wage Grade employee regularly assigned to a night shift who is "temporarily" assigned to the day shift is entitled to have his night shift differential continue during that temporary period. Mr. Brewer claims that until April 5, 1975, he had been regularly assigned to the swing shift in his position of aircraft jet engine assembler, Wage Grade 9, but that on April 6, 1975, he was "loaned" to the day shift. The Air Force takes the position

that Mr. Brewer's reassignment was not "temporary" within the meaning of FPM Supplement 532-1, Subchapter S8-4c(3)(iii).

We held in our decision of March 15, 1982, that the determination of whether a reassignment to a particular tour of duty is "temporary" is a factual matter for determination by the agency, and since the agency's characterization in this matter appeared reasonable, we would not substitute our judgment for that of the agency. We also pointed out that one who asserts a claim has the burden of furnishing sufficient evidence to clearly establish his right to payment and held that Mr. Brewer had not furnished any evidence to indicate that his transfer was temporary.

In an attempt to document his contention that his assignment was temporary, Mr. Brewer has submitted an accident report detailing an injury he suffered on October 10, 1975. Item 36 of that form contains the following question: "Was the employee engaged in his usual occupation at the time the injury occurred? If no, furnish detailed explanation." Mr. Brewer's supervisor responded that, "Employee is Engine mech. At present he is loaned to the Ind. mat. unit. [Indirect Material Unit]." Mr. Brewer contends that this makes it clear his assignment was temporary.

We have held that where there is a dispute between an employee and his agency, and the employee's evidence is of insufficient probative value to permit payment, we must deny the claim and leave the claimant to his remedy in the courts. Harold E. Richards, B-199263, February 4, 1981. The statement of Mr. Brewer's supervisor is not sufficient to overcome the determination of the Civilian Personnel Officer at Tinker Air Force Base that Mr. Brewer was reassigned to the day shift nontemporarily. Hence, Mr. Brewer has not met his burden of proving the liability of the United States and his right to payment. 4 C.F.R. § 31.7.

Mr. Brewer also claims that he was assigned to jobs he was physically unable to perform in violation of Air Force Regulation 40-716 which provides at paragraph 2a that:

"A supervisor may not require an employee to perform any duties in his position if there is a medical opinion by a Federal medical officer or the employee's private physician that the employee's physical or mental condition is such that performance of the duties would constitute an immediate threat to Government property or to the well-being of the employee himself, his fellow workers or the general public."

Mr. Brewer has submitted a Certificate of Medical Examination which was signed by a physician on February 16, 1973. The physician recommended limiting Mr. Brewer's walking and standing to 2 hours per day, recommended minimal climbing, and in connection with bending, climbing with legs only, and climbing with arms and legs, recommended minimal precautions. To show that his agency did not abide by the above quoted regulation, Mr. Brewer has included a job description of a position to which he states he was assigned in March 1975. He claims the physical requirements of this job exceed the limitations earlier outlined.

We need not make a determination in this matter for, even assuming for purposes of argument that the agency's actions were found to be improper, Mr. Brewer has not shown that he suffered a withdrawal or denial in pay as required by the Back Pay Act, 5 U.S.C. § 5596 (1976), and, therefore, has not established a basis for any payment to him.

The action which caused Mr. Brewer to lose his night differential was his assignment to a day shift--not his assignment to a job for which he was allegedly not physically suited. Since the latter action, even if improper, did not result in a lost or reduction in pay, there is no basis upon which we can authorize payment to Mr. Brewer.

We hereby affirm our decision of March 15, 1982.

Milton J. Socolar

Acting Comptroller General
of the United States