

DECISION

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

DUM
PM-I
29885

FILE: B-214131**DATE:** November 30, 1984**MATTER OF:** Elizabeth Smedley et al. -- Supplemental
Payments to SES Rank Award Recipients**DIGEST:**

Fiscal Year 1982 presidential rank awards were paid to members of the Department of Energy Senior Executive Service on November 22, 1982, although the checks were dated September 29, 1982. Under 5 U.S.C. § 5383(b), the aggregate amount of basic pay and awards paid to a senior executive during any fiscal year may not exceed the annual rate for Executive Schedule, Level I, at the end of that year. For purposes of establishing aggregate amounts paid during a fiscal year, an SES award generally is considered paid on the date of the Treasury check. In this case, however, since the agency can conclusively establish the actual date the employee first took possession of the check, the date of possession shall govern. 62 Comp. Gen. 675 distinguished.

This decision responds to the request of the Acting Assistant Controller, Financial Systems and Accounting, Department of Energy (DOE), for a decision as to whether members of the Senior Executive Service (SES) of that agency who received two separate payments for their awarded presidential ranks for fiscal year 1982 may retain the total amount of their award payments in view of our decision Senior Executive Service, 62 Comp. Gen. 675 (1983).^{1/} For the reasons which follow, we conclude that both the original payments and the supplemental payments may be retained by the SES members.

According to the Acting Assistant Controller, SES members Elizabeth Smedley, Percy Brewington, and Thomas Clark received initial rank award checks at the time of the Distinguished Executive Award ceremony held at the White House on November 22, 1982. However, these checks

^{1/} B-212756, September 27, 1983.

030674

were dated September 29, 1982, and held in the control of DOE until the White House ceremony. These initial checks were for less than the \$20,000 amount specified in 5 U.S.C. § 4507(e)(2) because that amount when combined with their respective base salaries would have resulted in aggregate amounts in excess of \$69,630 (the annual rate payable for positions in the Executive Schedule, Level I, at the end of fiscal year 1982) in contravention of 5 U.S.C. § 5383(b), which provides as follows:

"In no event may the aggregate amount paid to a senior executive during any fiscal year under sections 4507 [rank awards], 5382 [basic pay], 5384 [performance awards], and 5948 [physicians comparability allowances] of this title exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such fiscal year."

Effective December 18, 1982, the statutory annual salary rate payable under Executive Schedule, Level I, was raised to \$80,100. Public Law 97-377, § 129(b), December 21, 1982, 96 Stat. 1830, 1914. Based on this increase in the Executive Level I pay ceiling, DOE authorized supplemental rank award payments on April 5, 1983, in the following amounts: Elizabeth Smedley - \$7,701.52; Percy Brewington - \$4,013.84; Thomas Clark - \$5,941.52.^{2/}

The crucial question for the purposes of applying the aggregate amount limitation in 5 U.S.C. § 5383(b) is when payment took place. We answered this question in Senior Executive Service, cited above, as follows:

" * * * We believe that the date of the check furnishes the most definite and certain answer to this question. That conclusion is consistent with the Prompt Payment Act, Public Law 97-177, § 6, May 21, 1982, 96 Stat. 85, which provides that a payment

^{2/} We note that all amounts required for the presidential rank awards, including the supplemental payments, would be charged to fiscal year 1982 appropriations even though some or all of such amounts are paid in fiscal year 1983. See, e.g., 54 Comp. Gen. 472, 476 (1974).

thereunder is deemed to be made on the date a check for the payment is dated. 31 U.S.C. § 3901(a)(5).

"Therefore, for purposes of establishing aggregate amounts paid during a fiscal year under 5 U.S.C. § 5383(b), a senior executive is considered paid on the date of the Treasury check. * * *"

Since the DOE SES members who were awarded presidential ranks received checks dated September 29, 1982, DOE asks whether the decision quoted above requires the interpretation that these SES members received the initial payment in fiscal year 1982 and are therefore limited to the total salary ceiling of \$69,630, thereby making DOE's supplemental payments to them improper.

In Senior Executive Service, we were primarily concerned with fixing the date of payment, for purposes of SES bonuses, where in the regular course of business a Treasury check is scheduled for disbursement, dated, and mailed to the intended recipient. As shown above, we decided upon the date of the check as furnishing the most definite and certain answer under those circumstances. We did not consider or decide the question of fixing the date of payment when a check is not handled in the regular course of business. We stated, 62 Comp. Gen. at 678, that specific situations not covered by that case should be submitted for decision.

In the present case, the Treasury checks to the three executives were not handled in the regular course of business. Instead, they were dated on September 29, 1982, and delivered to the DOE, whose officials retained custody of the checks for almost 2 months. The checks were not delivered to the employees until November 22, 1982. Where, as here, there is no dispute that the checks were held in the control of the employing agency, the date of the check is not controlling. In this situation the date of payment for purposes of 5 U.S.C. § 5383(b) is the date the checks were delivered to the rank award recipients. The decision Senior Executive Service is distinguished on the facts.

It is also significant to note that the amounts of the presidential rank awards involved in this case are specific statutory entitlements as set forth in 5 U.S.C. § 4507 (e)(2), which provides as follows:

B-214131

"Receipt by a career appointee of the rank of Distinguished Executive entitles the individual to a lump-sum payment of \$20,000, which shall be in addition to the basic pay under section 5382 of this title or any award paid under section 5384 of this title."

This specific statutory entitlement of \$20,000 for Distinguished Executives is limited only by the pay cap established by 5 U.S.C. § 5383(b) which is set forth above. Therefore, as was recognized in Senior Executive Service, for presidential rank award recipients under section 4507 whose initial payment was reduced because of the pay ceiling of 5 U.S.C. § 5383(b), an agency is required to make a supplemental payment so that the senior executive receives the full amount of the \$20,000 statutory entitlement under section 4507(e)(2), limited only by the new Executive Level I pay ceiling of \$80,100. We note that this conclusion is consistent with advice given to agency directors of personnel by memorandum dated March 15, 1983, from the Office of Personnel Management.

Accordingly, we conclude that the three DOE presidential rank award recipients were paid their initial award payments in fiscal year 1983, on the date the checks were given to them. Therefore, the supplemental award payments made to them later in fiscal year 1983 were properly made, subject only to the aggregate salary limitation for fiscal year 1983 of \$80,100.

Milton J. Fowler
for Comptroller General
of the United States