The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Doris M. Arehart-Zuidema - Retention of Pay Incident to a Transfer

File: B-223356

Date: August 21, 1987

DIGEST

1. Civilian employee of the Air Force at the Pentagon in a grade GS-7, step 5, position was selected for a position in California that she had previously held at the same grade and step level as when she previously occupied the position, grade GS-6, step 6. The employee claims that since she was contacted by the chairman of the medical department regarding her availability for employment, her acceptance does not constitute a demotion at the employee's request and the Air Force should have applied the highest previous rate rule or pay retention rule to appoint her at a level commensurate with her highest level. Absent a mandatory policy or administrative regulation, the use of the highest previous rate is discretionary on the agency's part. We conclude that the authorized appointing official did not abuse his discretion in setting her pay at the grade GS-6, step 6, level.

2. Employee contends that local Air Force base supplementary regulation regarding use of the highest previous rate rule discriminates against persons not married to military or federal civilian employees. Our Office does not render decisions on the merits of, or conduct investigations into, allegations of discrimination in employment in the agencies of the government.

DECISION

BACKGROUND

Ms. Doris Marie Arehart-Zuidema, an employee of the Department of the Air Force, is claiming a retroactive salary adjustment through application of the highest previous rate rule or the pay retention rule to her appointment to the position she previously held.

We are denying Ms. Arehart-Zuidema's claim since use of the highest previous rate rule was discretionary on the agency's part and since we find no evidence establishing that the agency abused its discretion or acted improperly in this matter. We also find no basis to allow her claim under the pay retention rule.

Ms. Arehart-Zuidema was employed as a Secretary (Stenography), grade GS-7, step 5, at Headquarters, U.S. Air Force in Washington, D.C. In July 1985, Ms. Arehart-Zuidema was contacted by the Chairman of the Department of Family Practice at the Travis AFB hospital in California, inquiring as to her availability to return and assume the position she had previously held as the Department Chairman's secretary. Ms. Arehart-Zuidema indicated a willingness to return, and she commenced processing her application through the Travis AFB Civilian Personnel Office.1/ Subsequently, Ms. Arehart-Zuidema was selected from a list of candidates and was offered the position at a grade GS-6, step 6, level, which she accepted effective September 22, 1985.

DISCUSSION

The primary issue in this case is whether or not Ms. Arehart-Zuidema was entitled to the benefit of having her pay in her new position set in accordance with the highest previous rate rule. In addition, we must also address the question of whether or not Ms. Arehart-Zuidema's transfer and subsequent lower pay level was as a result of an action initiated at the employee's request or by management initiative for the purpose of determining her entitlement to pay retention.

The establishment of an employee's rate of pay upon a change of position under the General Schedule is governed by 5 U.S.C. § 5334 (1984) and regulations issued by the Office of Personnel Management and published in section 531.203 of title 5, Code of Federal Regulations (1985). The applicable regulation prescribes that an agency may utilize the employee's highest previous rate of pay in establishing a new rate of pay "* * * upon reemployment, reassignment, promotion, demotion or change in type of appointment."

1/ Ms. Arehart-Zuidema had submitted a Standard Form 171 application in May 1985 to the Travis Air Force Base Civilian Personnel Office for a grade GS-7 Secretary's position. This application was used by the Personnel Office in processing her subsequent employment action.

5 C.F.R. § 531.203(c). This authority is generally understood as the highest previous rate rule.

We have consistently viewed this regulation as vesting discretion in the agency regarding application of the rule in establishing an employee's rate of pay. B-191881, July 25, 1978; B-177195, December 14, 1972. Thus, under the statute and the Office of Personnel Management's implementing regulation, an employee has no vested right to receive the highest salary rate previously paid to him. B-140790, November 13, 1959. See also 31 Comp. Gen. 15 (1951). Furthermore, we have recognized that each agency is permitted to formulate its own policy regarding application of the rule, and where an agency has not affirmatively relinquished that discretion through adoption of a mandatory policy or administrative regulation, the agency is under no obligation to set an employee's pay at the highest previous rate. Carma A. Thomas, B-212833, June 4, 1984.

With regard to the highest previous rate rule, Air Force Regulation 40-530, as supplemented by Travis Air Force Base Supplement 1, implements Air Force policy regarding use of the highest previous rate rule, including the administrative procedure to process requests for exceptions to the regulation. This regulation makes the use of the highest previous rate rule a matter of the local installation commander's discretion, except for employees transferring with their military or federal civilian sponsors.2/

The record indicates that Ms. Arehart-Zuidema's rate of pay was established in accordance with the above-cited regulations and local policy. Under these regulations and local policy, her pay was set at a rate within grade GS-6 (step 6) so that, if later repromoted back to GS-7, she would not exceed her previous step in that grade (step 5). To preserve her highest previous rate of pay, the Air Force would have to set her pay at step 9 of grade GS-6. We can find no evidence of abuse of discretionary authority by the local authorities.

2/ This exception was promulgated by the Department of the Air Force on June 8, 1984, via Interim Message Change 84-1 to Air Force Regulation 40-530. The purpose of the policy is to reduce employment hardships on current Air Force employees whose spouses are transferred by the Air Force.

Ms. Arehart-Zuidema further claims that her changing positions (and subsequent demotion) from the Pentagon to Travis Air Force Base, California, was precipitated not by her request, but by management action in the form of the Family Practice Department Chairman inquiring as to her willingness to relocate and assume her former position. In this regard, she claims pay retention in connection with her demotion. The Federal Personnel Management Supplement (FPM) 990-2, Book 536, addresses grade and pay retention and the issues of management action and demotion at an employee's request. Demotion at an employee's request is defined as:

> "* * * A reduction in grade:
>
> (1) which is initiated by the employee for his or her benefit, convenience or personal advantage, including consent to a demotion in lieu of one for personal cause, and
>
> (2) which is not caused or influenced by a management action."

FPM Supplement 990-2, Book 536, at 536-3.

Should an employee request a demotion, then that employee is excluded by regulations from pay retention. Id. at 536-8. However, if an otherwise eligible employee does not request a demotion, then that employee is eligible for pay retention under those situations prescribed by regulation. Id. Paragraph S5-1d describes management action as follows:

> "If management has taken some action other than an action based on the conduct, character, or unacceptable performance of the employee, which may affect the employee adversely and thus influence the employee's decision to request a demotion, the demotion will not be considered as at the employee's request."

Id. at 536-26.

Specific examples of such actions are provided and include reduction-in-force, transfer of function, and reclassification. Id. None of these applies in Ms. Arehart-Zuidema's case. In fact, even though she was contacted by the Department Chairman, such an action cannot be construed as one which may have affected her adversely by offering her no alternative but to request a demotion.

According to the record, Ms. Arehart-Zuidema was free to decline the offer and continue working at her job in the Pentagon as a grade GS-7, step 5, secretary. The fact that the Travis AFB Civilian Personnel Office provided assistance to Ms. Arehart-Zuidema in processing her application and transfer does not constitute management action under this definition, since this assistance was provided after she had expressed a willingness to relocate. We therefore conclude that Ms. Arehart-Zuidema's acceptance of the position at Travis AFB, California, at the lower rate of pay constituted a voluntary action at the employee's request.

Finally, with respect to Ms. Arehart-Zuidema's claim that the Travis Air Force Base policy on use of the highest previous rate for certain spouses discriminates based upon marital status, we must point out that our Office does not render decisions on the merits of, or conduct investigations into, allegations of discrimination in employment in other agencies of the government. Equal Employment Opportunity Commission, 62 Comp. Gen. 239 (1983).

Accordingly, we conclude that the employee's pay upon demotion has been properly set and that her claim for a higher rate of pay must be denied.

for James F. Hinchman
Comptroller General
of the United States