



United States  
General Accounting Office  
Washington, D.C. 20548

Office of the General Counsel

B-242307

March 8, 1991

The Honorable Wayne Owens  
House of Representatives

Dear Mr. Owens:

We refer to your letter of November 20, 1990, with enclosures, regarding the eligibility of Mr. [redacted], a retired air traffic controller of the Federal Aviation Administration (FAA), for a "no annuity offset" benefit. Mr. [redacted] retired on December 29, 1987, and was reemployed by FAA as an air traffic controller on a part-time basis from February 17, 1988, until September 24, 1988.

Under normal circumstances, when a retired federal employee receiving a civil service retirement annuity is reemployed by the federal government, his salary is reduced or "offset" by the amount of his annuity.<sup>1/</sup> However, following the 1981 air traffic controllers strike and the resultant mass firings by the President, there was a severe shortage of controllers. In response to that shortage, the Congress passed legislation which permitted reemployed annuitant controllers to receive their full salary and full annuity.<sup>2/</sup>

In 1985, Congress amended 5 U.S.C. § 8344 and placed a "cap" or pay ceiling on the total amount of salary plus annuity that a controller may be paid. The cap was the salary rate payable for Level V of the Executive Schedule.<sup>3/</sup> The pay cap has subsequently been included in similar annual appropriations legislation enacted by the Congress.

When Mr. [redacted] was reemployed on February 17, 1988, the law in effect at that time provided that the "no annuity offset" provision applied "only in the case of any annuitant receiving an annuity . . . who, before December 31, 1986, applied for

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1/ See 5 U.S.C. § 8344(a) (1988).

2/ Pub. L. 97-276, § 151(g), Oct. 2, 1982, 96 Stat. 1186, 1202, added 5 U.S.C. § 8344(h).

3/ Pub. L. 99-88, title I, § 100, Aug. 15, 1985, 99 Stat. 293, 351, amended 5 U.S.C. § 8344(h) (1).

retirement or separated from the service while being entitled to an annuity."<sup>4/</sup> Since Mr. [redacted] retired on December 29, 1987, he was not entitled to the benefit of that provision.

Subsequently, effective September 30, 1988, section 8344(h) (2) was further amended to change the applicable date to December 31, 1987.<sup>5/</sup> Although Mr. [redacted] had retired on December 29, 1987, and would have been entitled to the benefit prospectively, his part-time reemployment by FAA was terminated on September 24, 1988, 6 days prior to the effective date of the change. Hence he was never entitled to the "no annuity offset."

Our decision, [redacted], 67 Comp. Gen. 424 (1988), to which you referred in your letter, has no specific relevancy to Mr. [redacted] entitlement to the "no annuity offset." In that decision, FAA had reduced Mr. [redacted] salary by applying the pay cap on an hourly basis. We held that, under 5 U.S.C. § 8344, as amended, the pay cap should be applied on a pay period basis. That decision is not applicable to Mr. [redacted] claim since he was never entitled to the "no annuity offset" benefit.

In reference to the three documents submitted by Mr. [redacted], documents numbered 1 and 3 are official FAA communications and do not address Mr. [redacted] specific entitlement to the "no annuity offset." Document 2, the newspaper article, makes reference to a recent General Accounting Office ruling. We have identified that ruling as [redacted], supra, which is not specifically applicable to Mr. [redacted] claim.

Based upon our analysis of the specific facts and circumstances involved in Mr. [redacted] claim, we are of the opinion that FAA properly determined that he was not entitled to the "no annuity offset" benefit during the period of his reemployment by the agency.

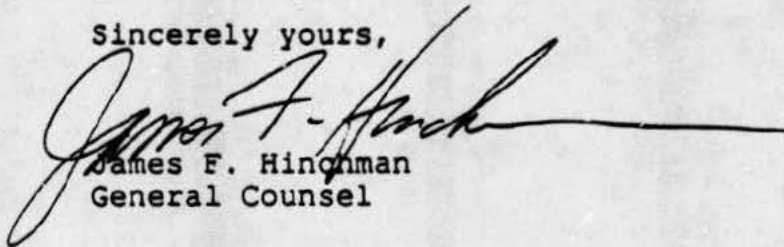
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4/ Pub. L. 100-202, § 101(1) [title I], Dec. 22, 1987, 101 Stat. 1329-358, 1329-362, amended 5 U.S.C. § 8344(h) (2).

5/ Pub. L. 100-457, title I, § 101, Sept. 30, 1988, 102 Stat. 2125, 2129, amended 5 U.S.C. § 8344(h) (2)..

We hope that the foregoing will be of assistance to you in responding to the concerns of Mr. [REDACTED].

Sincerely yours,

A handwritten signature in cursive script, appearing to read "James F. Hinchman", with a long horizontal flourish extending to the right.

James F. Hinchman  
General Counsel