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Comptroller General
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Boyd W. Venable III

**File:** B-246832

**Date:** June 22, 1992

## DIGEST

Employee resigned following a general notice of a proposed reduction-in-force (RIF) but before the agency issued a specific notice of the personnel action to be effected pursuant to the RIF. The employee is eligible for severance pay under 5 U.S.C. § 5595, because implementing regulations allow severance pay if an employee resigns subsequent to a general notice that all positions within the employee's competitive area will be abolished. 5 C.F.R. § 550.706(a)(2). The RIF notice that the employee received before resigning qualified as a general notice under 5 C.F.R. § 550.706(a)(2) because it announced the abolishment of all positions within the employee's competitive area by a date certain.

## DECISION

Mr. Boyd W. Venable III, a former employee of the Federal Deposit Insurance Corporation (FDIC) appeals our Claims Group settlement[1] denying his claim for severance pay. For the reasons stated below, we reverse the Claims Group's action and authorize the payment of severance pay.

BACKGROUND

Mr. Venable was formerly employed as an attorney at the FDIC Knoxville Consolidated Office, Knoxville, Tennessee, from July 11, 1983, until May 10, 1991. On February 25, 1991, the FDIC Regional Director issued a memorandum entitled "Office Closing" to all employees of the Knoxville Consolidated Office informing them that the FDIC had decided to close the Knoxville Consolidated Office by June 1, 1991. Subsequent to this notice of office closing, the FDIC offered Mr. Venable an attorney position in its Atlanta, Georgia office which Mr. Venable declined to accept, deciding in the alternative to accept a job offer in the

[1]Z-2867439, Nov. 29, 1991.

private sector. Mr. Venable submitted his resignation on May 4, 1991, effective May 11, 1991.

Mr. Venable applied to FDIC for severance pay, but FDIC denied his claim on the basis that his resignation was voluntary. Specifically, the FDIC found that Mr. Venable had not received a specific written notice that he would be separated involuntarily nor a general reduction-in-force (RIF) letter announcing that all positions in the competitive area would be abolished or transferred to another commuting area. FDIC also concluded that Mr. Venable's position was subject to mobility as a condition of employment and that Mr. Venable's action in declining the offer of transfer to the Atlanta office negated any eligibility for severance pay that he may otherwise have had. Our Claims Group concurred with FDIC's determination.

DISCUSSION

Under 5 U.S.C. § 5595(b)(2) (1988), an employee is entitled to receive severance pay only if he has been involuntarily separated after more than one year of service for reasons other than misconduct, delinquency, or inefficiency. Implementing regulations set forth in 5 C.F.R. § 550.706(a) provide that an employee's separation by resignation may be considered involuntary only if the employee resigns following one of several types of notice, including: (1) a specific notice of involuntary separation (5 C.F.R. § 550.706(a)(1)), or (2) a general RIF notice which announces that all positions in his competitive area will be abolished or transferred to another commuting area (5 C.F.R. § 550.706(a)(2)). A specific notice in the context of a RIF must apprise the employee of the particular personnel action to be taken against him, and its effective date. See 5 C.F.R. §§ 351.802 and 351.803. If it is determined on the basis of available facts and circumstances that an employee's resignation was not related to one of the types of notices specified in 5 C.F.R. § 550.706(a), the employee's resignation constitutes a voluntary separation and he is precluded from receiving severance pay under 5 U.S.C. § 5595. See 5 C.F.R. § 550.706(b).

In Bell v. U.S., 23 Cl. Ct. 73 (1991) the Claims Court, in referring to 5 C.F.R. § 550.706, said:

> "The regulation clearly contemplates that there may be voluntary resignations prior to receipt of a specific RIF notice which will be deemed involuntary separations . . . .
>
> "The second category involves employees who resign after a general RIF notice that all positions in

> their competitive area (the Memphis area for these plaintiffs) will be abolished or transferred to another area. We conclude that the general notice to plaintiffs combined with the requests and assurances from their supervisor constituted the substantial equivalent of a general RIF notice that all positions in their area would be abolished."[2] Id. at 78. (Emphasis supplied.)

Since it is uncontested that Mr. Venable was employed by FDIC for a continuous period of at least 12 months and was not separated for misconduct, delinquency or inefficiency, the issue is whether his resignation may be considered an involuntary separation from service. The FDIC Regional Director's memorandum dated February 25 unconditionally announced the closing of the Knoxville Consolidated Office and the transfer of any remaining bank assets to the O'Hare Consolidated Office, in Chicago, Illinois. This was to take place by June 1, 1991, a date certain, and employees were to be retained only until that date. The memorandum also stated that outplacement programs would be developed to help place employees in positions in other areas. Since there is no suggestion in the record that the FDIC maintained any other offices within commuting distance of its Knoxville office, we conclude that the Regional Director's memorandum was a general RIF notice announcing the abolishment of all FDIC's positions in the Knoxville commuting area, thereby meeting the requirements of 5 C.F.R. § 550.706(a)(2). The fact that Mr. Venable and other employees were asked about and offered positions in other geographical areas before specific RIF notices were issued further supports this conclusion.

The FDIC argues that Mr. Venable nevertheless should be denied severance pay because he failed to accept an offer of assignment to the Atlanta office. We do not agree.

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[2]The Claims Court decision in Bell v. United States, supra, was, in effect, an appeal by the plaintiffs from our decision in Benabe and Bell, 66 Comp. Gen. 609 (1987). Our Office denied the plaintiff's claims for severance pay on the basis that the RIF notice the employees received before resigning did not qualify as either a specific notice of a RIF action or general notice that all positions within the employees' competitive area would be abolished as required by the implementing regulations. The Claims Court disagreed based on additional information not referenced in our decision. The Court found that, in context, the action announced by the general RIF notices in combination with other communications from the employees' supervisor was substantially equivalent to an announcement that all positions in their competitive area were being abolished.

The regulations provide that a refusal to accept an assignment to another commuting area will be considered to be an involuntary separation for reasons other than misconduct, delinquency, or inefficiency, unless the employee's position description or other written agreement or understanding at the time of appointment provides for reassignment. 5 C.F.R. § 550.705.

The FDIC has not provided any documentation to suggest that Mr. Venable's position description contained any provisions requiring geographic relocation or that he signed a mobility agreement. Further, Mr. Venable contends that there was no understanding regarding his reassignment to another commuting area, pointing out that the vacancy announcement under which he was hired did not contain any provisions concerning geographic mobility. On the record before us, we are satisfied that there was no requirement that Mr. Venable accept assignment to another commuting area to avoid the loss of severance pay.

Accordingly, Mr. Venable's claim for severance pay is allowed.

Milton J. Socolar

for Comptroller General
of the United States