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DECISION



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

FILE: B-197025

DATE: July 18, 1980

MATTER OF: Betty J. Beasley, et al., - Pay rate upon promotion while receiving saved pay

DIGEST: Employees accepted downgrade from grade GS-6, step 9, to grade GS-5, step 10, in order to enter Upward Mobility Program. Their entitlement to saved pay under 5 U.S.C. § 5337 (1976) does not preclude consideration of highest previous rate when employees are subsequently promoted to grade GS-7. See 5 U.S.C. § 5334(b) (1976).

This decision is in response to a request from D. R. Newberry, Finance and Accounting Officer, U.S. Army Tank-Automotive Materiel Readiness Command (Army Command), concerning the proper rate of pay for employees promoted while receiving saved pay. The issue is whether the agency may use the highest previous rate rule when promoting an employee who had previously been downgraded and found to be entitled to saved pay. DLG02433

The report from the Army Command states that in December 1976, several employees accepted a change to a lower grade from grade GS-6, step 9, to grade GS-5, step 10, in order to enter an Upward Mobility Program. These employees were found to be entitled to saved pay for up to 2 years under the provisions of 5 U.S.C. § 5337 (1976). After the successful completion of 1 year in the Upward Mobility Program, these employees were then promoted to the grade GS-7 level. The Army Command's Civilian Personnel Office used the highest previous rate rule for these promotions and determined that their highest rate of pay (grade GS-6, step 9, \$14,061 per annum) fell between steps 5 and 6 of grade GS-7. Therefore, these employees were promoted to grade GS-7, step 6 (\$14,391 per annum), and their entitlement to saved pay terminated. See 5 U.S.C. § 5337(a) (1976).

The Army Command's Legal Office questioned the use of the highest previous rate rule since under the provisions of 5 U.S.C. § 5334(b) an employee receiving saved pay is entitled upon promotion to basic pay two steps above the rate he would be receiving but for saved pay (in this case a rate in grade GS-7 two steps above grade GS-5, step 10) or his existing rate of basic pay, if higher. The Legal Office determined that a two-step increase from GS-5, step 10, would be \$13,611 per annum which falls between steps 4 and 5 of grade GS-7,

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so a promotion would result in placement at grade GS-7, step 5 (\$13,980 per annum). Since the employee's saved rate (\$14,061 per annum) exceeded their rate of pay on promotion, the Legal Office concluded that the employees should continue to receive their saved rate.

Under the provisions of 5 U.S.C. § 5337 (1976), an employee who is reduced in grade may, under certain conditions, retain for up to 2 years the basic rate of pay he received immediately before the reduction in grade. See also 5 C.F.R. Part 531, Subpart E (1977). Section 5334(b) of title 5, United States Code, governing rates of pay upon change of position or appointment provides as follows:

"An employee who is promoted or transferred to a position in a higher grade is entitled to basic pay at the lowest rate of the higher grade which exceeds his existing rate of basic pay by not less than two step-increases of the grade from which he is promoted or transferred. If, in the case of an employee so promoted or transferred who is receiving basic pay at a rate in excess of the maximum rate of his grade, there is no rate in the higher grade which is at least two step-increases above his existing rate of basic pay, he is entitled to--

"(1) the maximum rate of the higher grade; or

"(2) his existing rate of basic pay, if that rate is the higher.

"If an employee so promoted or transferred is receiving basic pay at a rate saved to him under section 5337 of this title on reduction in grade, he is entitled to--

"(A) basic pay at a rate two steps above the rate which he would be receiving if section 5337 of this title were not applicable to him; or

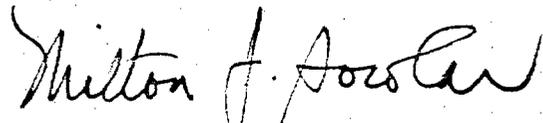
"(B) his existing rate of basic pay, if that rate is the higher."

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The Army Command's Legal Office argues that because the second paragraph of section 5334(b) specifies what an employee who is receiving saved pay is entitled to upon promotion or transfer, there is no discretion to use the highest previous rate rule. We disagree for the following reasons.

We believe the second paragraph of section 5334(b) establishes the statutory minimum that an employee on saved pay can receive upon promotion or transfer, that is, either a two-step increase or the existing (saved) rate, whichever is higher, and neither the statute nor the implementing regulations preclude the use of the highest previous rate rule in this situation. Therefore, we conclude that section 5334(b) does not preclude an agency from considering the highest previous rate when promoting an employee who is receiving saved pay.

Accordingly, the action of the Army Command's Civilian Personnel Office in considering the highest previous rate is consistent with applicable laws and regulations.



For the Comptroller General
of the United States