

*Mr. K. J. ...*

**DECISION**



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

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**FILE:** B-216575

**DATE:** March 26, 1985

**MATTER OF:** William A. Lewis

**DIGEST:**

The employing agency has the primary responsibility to determine whether an employee has duties of sufficient risk performed irregularly and intermittently so as to justify a hazardous duty pay differential. The Comptroller General will not overturn the agency's determination that the employee's duties do not meet the requirements for a hazardous duty pay differential in a case where the agency's determination was not arbitrary and capricious. Concerning upward classification of the grade for a position because of hazardous duties, such position classification determinations are within the jurisdiction of the employing agency and the Office of Personnel Management, not the Comptroller General.

In this case we find that Mr. William A. Lewis, an employee of the Defense Logistics Agency, is not entitled to hazardous duty pay for the period May 9, 1982, through February 11, 1984.<sup>1/</sup>

Mr. Lewis outlined his claim in documents forwarded to the employing office by letter of December 30, 1983. He also submitted supplemental letters dated February 21, and March 4, 1984. He believes that he is due a 25-percent salary increase because, as a Quality Assurance Specialist, he was subjected to risks from flammable and explosive materials, toxic substances, and workplaces requiring him to climb and enter fuel tanks as well as go into compartments below the decks of ocean tankers.

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<sup>1/</sup> The Chief, Accounting and Finance Division, Office of the Comptroller, Defense Logistics Agency, requested an advance decision based on an administrative report and working papers submitted by the Accounting and Finance Officer of the Agency's Defense Contract Administration Services Region, Los Angeles, California.

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Although the workpapers show some difference of opinion over the question, the agency management responsible for deciding the issue has determined that the duties of Mr. Lewis' position did not have the degree of risk warranting a hazardous duty pay differential under 5 U.S.C. § 5545(d) and the implementing regulations at 5 C.F.R. § 550.901-907. These provisions permit the differential only when the hazardous duties are irregular and intermittent and not considered in establishing the grade level of the position. Although denied by Mr. Lewis, the employing office states that the duties in question were regularly performed on a recurring basis and were considered in the job classification process fixing the grade level of the position.

We have held that whether a particular work situation warrants a hazardous duty differential is primarily a question for decision by the employing agency, subject to the qualification that it decide without being arbitrary and capricious. Ordinarily we will not substitute our judgment for that of the agency officials who are in a better position to investigate and resolve the matter. Joseph Contarino, et al., B-202182, January 19, 1982. In the present case, we are not in a position to say that agency management acted unreasonably in concluding that the risk was insufficient and that the duties were regularly performed on a recurring basis as well as appraised in classifying the position. Also, it is not obvious to us that work situations described by Mr. Lewis fit the hazardous tasks enumerated in Appendix A, 5 C.F.R. Part 550, so as to constitute a risk warranting the salary differential.

Mr. Lewis asks our interpretation of the term "irregular or intermittent" hazardous duty justifying the differential, as opposed to regularly and recurring hazardous duty, which is not compensated by the differential. The standard of "irregular or intermittent duty," as indicated in 5 U.S.C. § 5545(d), is that the "physical hardship or hazard not usually [be] involved in carrying out the duties of" the position. The pertinent legislative history reads:

"Extra compensation may be provided Classification Act employees through the regular position classification process when the unusual physical hardship or hazard is inherent in the position, when it regularly

recurs, and when it is performed for a substantial part of the working time. \* \* \*"  
H.R. Rep. No. 31, 89th Cong., 1st Sess.  
(1965), at 2.

In other words, Congress realized the possibility that the position classification system would compensate the employee by a higher grade level if hazardous duty regularly recurs and is substantial, in which case an extra increase by a salary differential would be unwarranted. The differential applies only when the hazards are infrequent and a small portion of the work time so that such "irregular or intermittent" hazardous duties are not considered in evaluating the position for the proper grade level. However, we point out that even though the position classification system fails in a particular case to take into account the hazardous duty in fixing the grade level, there is no entitlement to the differential if the hazardous duties are regular and recurring. This result follows from the separate statutory standard that such duty must be "irregular or intermittent" if the differential is to be paid. See B-177580, August 21, 1983.

Further, we do not have jurisdiction over position classification matters. Appeals to raise the grade levels of a position because of the duties performed by the employee are to be brought before the employing agency and the Office of Personnel Management. Even if an appeal is successful, there is no entitlement to backpay for an erroneous classification. Joseph J. Zarba, B-198473, April 12, 1982; United States v. Testan, 424 U.S. 392 (1976); 5 C.F.R. §§ 511.101-511.703 (1984).

We note that the record before us indicates that the employing agency still may be reviewing further the underlying factual issues concerning the risks inherent in similar positions and the effect of those risks on position classification or the propriety of paying a hazardous duty differential. As is indicated above, those are matters properly for consideration by the agency and the Office of Personnel Management, and our determination here is not intended to affect the outcome of the agency's review. However, on the

30807

B-216575

present record, there is no basis for us to authorize payment of the additional pay Mr. Lewis claims.

*for* *Norris R. Dan Clene*  
Comptroller General  
of the United States