



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Frank J. Robichau, Jr. - Intermittent versus Part-Time Employment

File: B-230740

Date: November 29, 1988

DIGEST

An intermittent employee appeals a claim settlement disallowing his claim for retroactive benefits as a full-time employee. The settlement is affirmed since no material mistake of law or fact in the original settlement is established. The records presented do not clearly establish that the employee served a regular tour of duty scheduled in advance under which he was routinely scheduled for work at specific times and dates for each of the two workweeks of a given pay period.

DECISION

This decision is in response to a request by the American Federation of Government Employees, Local 1931, on behalf of Mr. Frank Robichau, Jr., appealing our Claims Group settlement Z-2864744, January 27, 1988, in which we denied Mr. Robichau's claim for retroactive benefits as a full-time employee during the period March 18 through July 30, 1985. The settlement is sustained since the union has not established any material mistake of law or fact in the settlement.

BACKGROUND

Mr. Robichau was employed intermittently as a blocker and bracer at the Naval Weapons Station, Concord, California, during the period in question. The record shows that once during this period Mr. Robichau did work two consecutive 80-hour pay periods. Therefore, he contends that he has met the requirement for conversion from intermittent to full-time employment contained in the Federal Personnel Manual (FPM), ch. 340, § 4-1c (Inst. 321, April 3, 1985). The FPM, ch. 340, § 4-1c provides in part as follows:

"c. Changing an intermittent to part time. When an agency schedules an intermittent employee, in

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advance of the pay period, to work at some time during each administrative week for more than two consecutive pay periods, the agency is required to change the employee's work schedule from intermittent to part time. . . . The employee would then be entitled to the benefits appropriate to the work schedule and appointment. . . ."
(Emphasis supplied.)

The agency rejected Mr. Robichau's argument, maintaining that his position was established as intermittent since his work schedule was contingent upon ship movements and variable workload requirements, neither of which could be accurately predicted more than a day or so in advance. The agency further stated that while Mr. Robichau did work full-time for two consecutive pay periods, his schedule was determined on a daily, as needed basis, not "in advance of the pay period," as required by section 4-1c.

Our Claims Group denied the claim for retroactive benefits as a full-time employee, agreeing that the requirements of section 4-1c were not met. Our Claims Group found (1) that Mr. Robichau did not provide sufficient evidence to support his argument that the scheduling was done in advance and (2) that the record showed that he worked full-time on only one occasion during the claim period.

The union appealed that settlement, reiterating the claim that Mr. Robichau's work was scheduled in advance and submitting the same documentary evidence sent in as part of the original request, which shows that Mr. Robichau was temporarily assigned to certain locations for certain periods of time.

OPINION

The union's letter requesting reconsideration does not present any new factual information or legal argument that has not already been considered. Instead, the union restates the belief that Mr. Robichau's work was scheduled in advance and therefore his request should be granted.

In our decisions concerning FPM, ch. 340, § 4-1c, we have consistently held that this provision requires that the intermittent employee be scheduled in advance to report at a definite and certain time within each workweek. For example, in James P. Wendel, B-206035, Apr. 26, 1982, we held that a Department of the Army civilian employee appointed as a commissary store worker on an intermittent basis could not be retroactively granted a regular part-time appointment in the absence of evidence establishing that he

worked a prescheduled, continuous, regular tour of duty. The employee in Wendel did not produce evidence sufficient to counter the administrative determination that he was not provided specific duty hours in advance. Moreover, the listing of hours worked showed that the daily hours of work he was required to perform varied each week. See also Helen M. Jew, B-230840, Aug. 18, 1988, and decisions cited.

The documents that the union resubmitted do not clearly establish that Mr. Robichau was required to perform duty at a definite time during an administrative workweek. While they do show that Mr. Robichau was assigned to a particular location during a particular period of time, these documents do not show exactly what days and hours he was to work during the overall time period. These documents do not rebut the agency's contention that Mr. Robichau was not provided specific daily duty hours in advance.

Accordingly, since the union has not made a clear showing that the criteria of the FPM and our decisions are met in this case, we sustain our Claims Group's denial of Mr. Robichau's claim for retroactive benefits as a full-time employee.

Milton J. Fowler
for Comptroller General
of the United States