



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Yukio Fujikawa - Request for Additional
Compensation - Reconsideration

File: B-231927.2

Date: February 12, 1990

DIGEST

An employee, who exercised his reemployment rights under 10 U.S.C. § 1586 (1982), accepted a demotion and returned from overseas to his prior position in Hawaii. Upon reconsideration, he is entitled to additional compensation since the agency set his rate of "basic pay" at less than that to which he would have been entitled if he had not been assigned to duty outside the United States. The term "basic pay" includes the special rate of pay he received under 5 U.S.C. § 5303 before his overseas assignment. Decision Yukio Fujikawa, B-231927, Feb. 3, 1989, is overruled.

DECISION

Mr. Fujikawa, a former employee of the Department of the Navy, has appealed our denial of his claim for additional compensation in our decision Yukio Fujikawa, B-231927, Feb. 3, 1989. Mr. Fujikawa alleges that his salary was erroneously set by the Navy upon his return from an overseas assignment in 1974. For the reasons that follow, our Feb. 3, 1989, decision is overruled and Mr. Fujikawa's claim for additional compensation is allowed to the extent it is not time-barred.^{1/}

It is necessary to only briefly restate the facts here since they are more fully set out in our prior decision. Mr. Fujikawa was employed by the Navy at the Pearl Harbor Naval Shipyard in Hawaii in 1966 as an engineer, grade GS-11, step 7, where he received a special rate of pay established for engineers under the provisions of 5 U.S.C. § 5303 (1970).

^{1/} That portion of Mr. Fujikawa's claim which accrued prior to December 29, 1981, is barred by the statutory limitation in 31 U.S.C. § 3702(b)(1) (1982).

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In July 1966, Mr. Fujikawa transferred to a position in Yokohama, Japan. Under 10 U.S.C. § 1586(c) (1982),^{2/} a Department of Defense civilian employee who transfers overseas is granted the right to return to a position in the United States without reduction in the seniority, status, and tenure held by the employee before his assignment outside the United States. In addition, an employee who returns to a position from overseas "shall be paid at a rate of basic pay which is not less than the rate of basic pay to which he would have been entitled if he had not been assigned to duty outside the United States." 10 U.S.C. § 1586(d) (1982).

Mr. Fujikawa was promoted while in Japan and was a grade GS-12, step 7, when he exercised his reemployment rights at Pearl Harbor in June 1974, and accepted a demotion to grade GS-11. In the meantime, the special pay rate for GS-11 engineers in Hawaii had been discontinued effective February 7, 1971, and engineers subject to the special pay rate in Pearl Harbor were given a saved rate of pay. 5 C.F.R. § 530.306 (1971). As reconstructed by the Navy, the engineers' saved rate that Mr. Fujikawa would have received in June 1974 if he had remained at Pearl Harbor was \$20,335, an amount exceeding the regular rate of \$19,072 for GS-11, step 10. However, since he was demoted upon reemployment at Pearl Harbor, he was given saved pay for 2 years based upon his then current salary rate of \$20,995,^{3/} rather than the engineers' saved rate. 5 U.S.C. § 5337 (1970). Then, upon the expiration of 2 years saved pay in June 1976, the Navy reduced his pay to the regular rate for GS-11, step 10, not to the higher saved rate for engineers.

Mr. Fujikawa states that as a result of his pay reduction in 1976, he received less pay than several of his colleagues who did not transfer overseas. He says that his pay should have been reduced only to the saved rate for engineers. Thus, Mr. Fujikawa contends that he was not granted his right under 10 U.S.C. § 1586(d) to receive the same rate of basic pay to which he would have been entitled if he had not been assigned to duty outside the United States.

^{2/} Public Law 86-585, 74 Stat. 325, July 5, 1960, as amended.

^{3/} Initially his rate was erroneously set at \$21,578, and Mr. Fujikawa was overpaid. However, administrative offset would now seem to be precluded by the 10-year statute of limitations provision. 31 U.S.C. § 3716(c)(1) (1982).

Upon reconsideration, we agree with Mr. Fujikawa that his rate of basic pay upon reemployment should have been set on the basis of the special rate of pay that he received in Pearl Harbor prior to his assignment outside the United States and that his pay rate upon expiration of 2 years saved pay in 1976 should have been set on the basis of the special saved rate for engineers, as adjusted.

In support of his request for reconsideration, Mr. Fujikawa furnished a letter from the Office of Personnel Management (OPM).^{4/} The OPM letter states that special pay rates established under 5 U.S.C. § 5303(a) are considered to be rates of basic pay. In addition, we were informally advised by OPM that the special rate of pay for engineers should have been used in computing the employee's basic pay pursuant to 10 U.S.C. § 1586, regardless of whether or not the employee received saved pay.

Accordingly, based on OPM's advice, we now conclude that the term "basic pay" does include a special rate of pay to which an employee is entitled under 5 U.S.C. § 5303(a). Thus, when Mr. Fujikawa returned to Hawaii in June 1974, his basic pay included the saved rate that was adopted when the special pay rate for engineers was discontinued in 1971. Additionally, he was entitled to saved pay for 2 years following his demotion under 5 U.S.C. § 5337.^{5/} The Navy properly set his salary at the higher rate in June 1974. However, when saved pay ended 2 years later, the Navy erred in adjusting his pay to the regular General Schedule rate.^{6/} He was entitled to a higher rate based upon the saved rate for engineers, as adjusted to June 1976.

Accordingly, our decision Yukio Fujikawa, B-231927, Feb. 3, 1989, is overruled and Mr. Fujikawa's claim for additional compensation may be allowed for his period of employment beginning December 29, 1981, until his retirement. This

^{4/} Letter dated Nov. 9, 1989, from Clarence R. Mathews, OPM, to Honorable Patricia Saiki, U.S. House of Representatives.

^{5/} See Navy regulation, CMMI 352.7, subchapter 7, OCMMINST 12000.1 ch-80, 29 Nov. 73.

^{6/} See FPM § 531.5-4h, Inst. 106, May 6, 1968 (Revised July 1969).

case is remanded to the Navy to determine the amount of
backpay to which Mr. Fujikawa is entitled.

for Milton J. Arosar
Comptroller General
of the United States