



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lionel D. Anderson - Claim for Severance Pay

File: B-238130

Date: November 23, 1990

DECISION

This is in response to an appeal of a Claims Group determination denying severance pay to Mr. Lionel D. Anderson upon his termination from a civilian position as an aircraft mechanic with the Arkansas Army National Guard. We affirm the Claims Group's decision.

The record shows that military separation proceedings were initiated against Mr. Anderson after he failed a military drug screening test. Because Army Regulation 600-85 requires the removal of any person with positive drug screening results from military duties that involve aviation, Mr. Anderson was reassigned from his military aviation specialty to the position of light vehicle mechanic. He also was required to enter a drug rehabilitation program.

As a condition of his employment in the National Guard as a civilian technician, Mr. Anderson had to maintain a compatible military position in the National Guard. The National Guard determined that Mr. Anderson was not qualified for a technician position compatible with his new military specialty, and he therefore was terminated from his civilian position as an aircraft mechanic, as of January 11, 1987.

The National Guard did not pay Mr. Anderson severance pay upon his termination. Severance pay is authorized by 5 U.S.C. § 5595(b) for an employee who has been employed by the government for a continuous period of at least 12 months and is involuntarily separated, but not by removal for cause on charges of misconduct, delinquency, or inefficiency. The basis for denial in Mr. Anderson's case was the Adjutant General's view that Mr. Anderson's failure to maintain a compatible military position was "the direct and proximate result of his voluntary use" of drugs, so that his separation was due to misconduct, delinquency, or inefficiency. The Claims Group denied Mr. Anderson's subsequent claim.

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Mr. Anderson complains that the National Guard's testing procedures are inadequate, that he did not knowingly ingest drugs, and that he was treated unfairly because another individual who similarly lost his job received severance pay.

The requirement that a civilian technician in the National Guard maintain membership in the National Guard in a position compatible with his civilian position is in 32 U.S.C. § 709 and implementing regulations. The statute also provides that a technician may be separated from his civilian position for cause at any time by the adjutant general of the jurisdiction concerned. 32 U.S.C. § 709(e)(3). We have held that a determination of "cause" for removal is primarily a matter for the agency concerned and will not be disturbed in the absence of any indication that it was arbitrary or capricious. See Joseph M. Moyher, B-172682, June 9, 1981.

Mr. Anderson has presented no evidence to support his allegations about the propriety of the National Guard's drug testing and his subsequent treatment by the Guard. Further, an Administrative Separation Board investigated Mr. Anderson's claim that he did not knowingly ingest drugs, and concluded that the allegation was not credible and that he in fact had acted voluntary. As to Mr. Anderson's claim that a similarly situated individual received severance pay, the National Guard has informally advised us that the individual was an active duty member of the Guard, rather than a civilian technician, and, consistent with governing regulations, received an amount of military separation pay, not civilian severance pay, upon involuntary discharge.

In our opinion, the Adjutant General's determination that it was Mr. Anderson's misconduct that led to the unallowable incompatibility between the military and civilian duties, and thus to terminate him for cause under 32 U.S.C. § 709, was not arbitrary or capricious. Accordingly, the Claims Group's decision that Mr. Anderson properly was denied severance pay under 5 U.S.C. § 5595 is affirmed.


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