



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Catherine L. Drake

File: B-247553

Date: May 8, 1992

DIGEST

Employee claims a salary rate adjustment under the highest previous rate rule. An agency is not under a legal obligation to set an employee's salary at the highest previous rate, unless it has affirmatively relinquished its discretion through the adoption of a mandatory policy, which is not the case here. Furthermore, we cannot say that the agency's actions constituted an abuse of discretion. Thus, employee's claim is denied.

DECISION

This is in response to a request by Ms. Catherine L. Drake for a salary rate adjustment under the highest previous rate rule. For the following reasons, we deny her claim.

Ms. Drake is an employee of the Defense Mapping Agency, Department of Defense, St. Louis, Missouri. She was appointed as a Computer Operator on September 26, 1983. She had previously been employed by the United States Coast Guard in a GS-4, step 8, position, but had not worked there for the past 6 years due to a job-related injury.

In keeping with local practice, the Defense Mapping Agency set her compensation at GS-4, step 1, despite her previous rate of GS-4, step 8. The local practice also permitted, but did not require, her salary rate to be adjusted based on the highest previous rate upon subsequent promotion provided her supervisor recommended such an adjustment.

Ms. Drake was promoted to grade GS-5, step 1, on February 17, 1985, and her salary rate was not adjusted under the highest previous rate rule. It is unclear whether or not Ms. Drake's supervisor was contacted by the Personnel Office, but he did not submit a formal written request for such an adjustment. In any event, the issue of whether or not the Personnel Office contacted Ms. Drake's supervisor is not determinative as to her legal entitlement to a retro-

active salary rate adjustment under the highest previous rate rule.

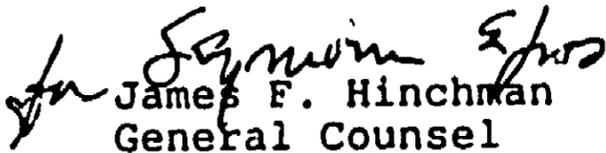
The highest provisions rate rule is derived from title 5, United States Code, § 5334(a) (1988), and 5 C.F.R. § 531.203(c) and (d) (1991), which provide that an employee who is reemployed, reassigned, promoted, or demoted, or whose type of appointment is changed may be paid at the highest rate of the grade held which does not exceed the employee's highest previously earned rate of pay.

Our decisions have consistently held that it is within the agency's discretion to fix the initial salary rate of an employee at the minimum salary of the grade to which appointed and that an employee has no vested right upon reemployment, transfer, promotion or demotion to receive the highest salary rate previously paid. Barbara J. Cox, 66 Comp. Gen. 684 (1987), reconsidering and affirming 65 Comp. Gen. 517 (1986), and cases cited therein. Each agency may formulate its own policy regarding application of the highest previous rate rule, and, unless the agency affirmatively relinquishes its discretion, retroactive salary rate adjustments cannot be authorized absent a showing that the agency abused its discretion. Carma R. Thomas, B-212833, June 4, 1984.

The Defense Mapping Agency does not now have, nor did it have a policy or regulation mandating the use of the highest previous rate rule in setting compensation rates when Ms. Drake was promoted in February 1985.

Since the Defense Mapping Agency has not adopted a mandatory policy, Ms. Drake has the burden of proving that the Defense Mapping Agency's abused its discretion in not granting her the highest previous rate upon her subsequent promotion on February 17, 1985. On the record before us, we cannot say that the Defense Mapping Agency's actions or omissions constituted an abuse of discretion so as to entitle Ms. Drake to an adjustment of her salary rate based on the highest previous rate. Carma R. Thomas, B-212833, supra.

Accordingly, Ms. Drake's claim is denied.


James F. Hinchman
General Counsel