



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Lafayette E. Carnahan

File: B-249816

Date: March 8, 1993

DIGEST

Employee who was receiving a 25 percent retention allowance under 5 U.S.C. § 5754 (Supp. II 1990), has retired from federal service and requested that the retention allowance be included in his lump-sum leave payment under 5 U.S.C. § 5551 as pay he would have received had he remained in the service until expiration of the period of the annual leave. The claim is denied. A retention allowance is an addition to basic pay in the nature of a bonus for remaining with the agency, payment is discretionary with the head of the agency and may be reduced or discontinued at any time, and a reduction or elimination may not be appealed. Payment as lump-sum leave would be inconsistent with the intent of the statute to retain an employee who would otherwise leave government service.

DECISION

The issue presented is whether a retention allowance may be included as part of the lump-sum leave payment upon an employee's retirement from federal service.¹ For the following reasons, the payment may not be made.

Under the provisions of 5 U.S.C. § 5754, as added by the Federal Employees Pay Comparability Act of 1990,² the head of an agency may make payment of up to 25 percent of basic pay to a current employee if (1) the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee, and (2) the agency determines that the

¹The question was submitted by Elizabeth E. Smedley, Acting Chief Financial Officer, Department of Energy, Washington, D.C.

²Public Law 101-509, § 529 [title II, § 208(a)], Nov. 5, 1990, 104 Stat. 1459.

employee would be likely to leave in the absence of a retention allowance. 5 C.F.R. § 575.301 (1992).

A retention allowance is calculated as a percentage of the employee's rate of basic pay and paid in the same manner and at the same time as basic pay. However, a retention allowance shall not be considered part of an employee's rate of basic pay for any purpose, and a reduction or elimination of a retention allowance may not be appealed. 5 U.S.C. § 5754(b)(2); 5 C.F.R. §§ 575.306(a), 575.307(c) (1992). Thus, for example, a retention allowance would not be considered in determining an employee's "high-three" for computation of a retirement annuity. Moreover, an agency may continue payment of a retention allowance as long as the conditions giving rise to the original determination still exist. 5 C.F.R. § 575.306(c) (1992).

Mr. Lafayette E. Carnahan was employed by the Department of Energy (DOE) in its San Francisco, California Field Office as a GS-1212-14 Patent Advisor. The DOE determined that it was necessary to retain Mr. Carnahan's services, and on this basis, he was authorized payment of a 25 percent retention allowance. The retention allowance was effective March 8, 1992. Mr. Carnahan retired on May 1, 1992, stating that he would accept employment outside the government.

The DOE paid Mr. Carnahan for 303 hours of unused annual leave upon his retirement, but did not include the 25 percent retention allowance in his final payment. Mr. Carnahan argues that he would have been paid at the higher rate if he had taken the leave and then retired from DOE. Thus, he concludes that it would appear proper to receive the same leave payment at the time of his retirement.

The Office of Personnel Management (OPM) has statutory authority to prescribe regulations pertaining to the authorization of a retention allowance. 5 U.S.C. § 5754(d). Therefore, we requested OPM's comments and were informally advised that including a former employee's retention allowance in a lump-sum leave payment is fundamentally at odds with the purpose of the law and the regulation providing for payment of retention allowances. OPM says that retention allowances are intended to help agencies retain certain employees who possess unique qualifications or who are critical to the agency's mission and who would be likely to leave federal employment without an additional incentive to remain. Therefore, OPM concludes that payment of a retention allowance should be terminated at the time an employee indicates his or her intention to leave federal employment.

Further, OPM has advised that it now has authority under the Technical and Miscellaneous Civil Service Amendments Act of

1992, Pub. L. No. 102-378 (1992), to regulate the lump-sum leave provisions in 5 U.S.C. § 5551, and is considering barring retention allowances in lump-sum payments.

We note that OPM has classified and defined a retention allowance as a discretionary continuing payment which an agency may decide to pay or not to pay to a particular employee. 5 C.F.R. § 530.202; 56 Fed. Reg. 12,835 (1991).

The regulations further provide that an agency has the discretionary authority to discontinue the allowance when there is no longer a reason for its payment (5 C.F.R. § 575.307(b) (1992)), and an employee may not appeal the agency's discretionary reduction or elimination of a retention allowance. 5 U.S.C. § 5754(b) (2).

Thus, since an employee is not entitled to the continuance of the allowance, and since payment of a retention allowance upon separation from service would be inconsistent with the purpose of the statute to prevent an employee with unusually high or unique qualifications from leaving the federal service for employment in the private sector,³ Mr. Carnahan's request for inclusion of the retention allowance in his lump-sum leave payment is denied.

for *Seymour Glass*
James F. Hinchman
General Counsel

³5 C.F.R. § 575.305(c).