



Comptroller General
of the United States
Washington, D.C. 20548

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Decision

Matter of: Jerry W. Walters
File: B-251301.2
Date: September 17, 1993

DIGEST

A former employee of the Bureau of Alcohol, Tobacco and Firearms applied for backpay in January 1992, which would have been due him under the highest previous rate rule during 1978 to 1982, if his prior service as an intelligence case officer with the Department of the Navy under a "personal service contract" was creditable for additional compensation purposes. Even though a special law in 1988 made such service retroactively creditable for retirement purposes under certain conditions, that law did not make such service creditable for additional compensation purposes. Employee's backpay claim is denied.

DECISION

The Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms requests a decision as to whether the backpay claim of Mr. Jerry W. Walters may be paid for additional compensation, which is ultimately based upon "contract service" as an intelligence case officer with the Department of the Navy.¹ For the following reasons, we deny Mr. Walters's claim.

BACKGROUND

Mr. Jerry W. Walters was employed as an intelligence case officer under a "personal service contract" with the Department of the Navy from January 25, 1973, until December 31, 1976.² That contract expressed the status of Mr. Walters's employment as that of an independent contractor and not one

¹This request was submitted by Mr. Paul R. Gentile, Financial Manager, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC.

²Letter from Department of the Navy to Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, dated September 27, 1978.

of employment in a position in either the civil service or excepted service.

Mr. Walters became an employee of the Bureau of Alcohol, Tobacco, and Firearms, Department of the Treasury (the Bureau), on October 10, 1978, when he was appointed as an Intelligence Operations Specialist at grade 9, step 1. His appointing document noted that "[p]ay rate is subject to retroactive upward adjustment upon verification of prior service."³ Mr. Walters worked for that Bureau until February 7, 1982, when he transferred to a position as an Intelligence Research Specialist at Grade 12, Step 2, with the United States Customs Service, Department of the Treasury.⁴ Mr. Walters retired on January 3, 1993.

Just prior to his first employment with the Bureau on October 10, 1978, the Bureau received a letter from the Navy which verified Mr. Walters's service as an intelligence case officer under a "personal service contract" from January 25, 1973, until December 31, 1976.⁵ Since such service was not in a position under the civil service or excepted service, the Bureau did not then consider it creditable for compensation or retirement purposes. If such contract service had been creditable for compensation purposes, the Bureau concedes that for the relevant period of 1978 to 1982, Mr. Walters would have been then entitled to an upward pay rate adjustment due to the application of the highest previous rule to that service. We note that the legal correctness of the Bureau's position of not regarding Mr. Walters's contract service as creditable for retirement purposes was upheld in Horner v. Acosta, 803 F.2d 687 (Fed. Cir. 1986).

³The document used for Mr. Walters's appointment was a Form TDF-10-11.F, an approved exception to Standard Form 50 at that time. The retroactive upward adjustment is due to the effect of the highest previous rate rule. See 5 U.S.C. § 5334(b) (1988) and Chapter C, para. 6b of BATF Order 2530.1, Oct. 2, 1974. See also Douglas C. Butler, 58 Comp. Gen. 51 (1978) (on effect of nondiscretionary regulations).

⁴Mr. Walters's Standard Form 50-B, dated February 6, 1982, for this position also has the notation: "[p]ay rate is subject to upward retroactive adjustment upon verification of prior service." Mr. Walters subsequently received a within-grade increase to GS-12, step 3 on November 14, 1982, a promotion to GS-13, step 1 on October 16, 1983, and a within-grade increase to GS-13, step 2 on October 14, 1984. Promotions and within-grade increases after 1984, if any, are not relevant here and thus are not listed.

⁵See Letter, cited in footnote 2, supra.

The Bureau report on Mr. Walters states that due to the clandestine nature of his prior service as an intelligence case officer with the Department of the Navy from January 1973 to December 1976, however, it was not until February 12, 1991, at the earliest, that the Bureau could even possibly have considered his prior service as creditable for additional compensation or retirement purposes. This came about in the following manner.

On January 8, 1988, a special law was enacted which provided that certain service performed under a personal service contract with the government should be retroactively credited as service under the Civil Service Retirement System.⁶ Subsequently, pursuant to Mr. Walters's timely request under that statute, the Department of the Navy first verified Mr. Walters's prior service as an intelligence case officer from January 1973 to December 1976 in its letter to the Office of Personnel Management, dated February 12, 1991. Then, on September 17, 1991, after having received the required deposit from Mr. Walters, the Office of Personnel Management credited Mr. Walters's prior service as federal service for purposes of the Civil Service Retirement System.⁷

In January 1992, Mr. Walters applied to the Commissioner, U.S. Customs Service, for a retroactive upward pay rate adjustment for the relevant period of 1978 to 1982, based on application of the highest previous rate rule because of his prior service as an intelligence case officer with the Department of the Navy. Mr. Walters contends that his prior service should now be creditable not only for retirement purposes, but also for additional compensation purposes.

The Bureau contends that while the special law, cited in fn. 6, supra, entitles Mr. Walters to credit for his prior service for retirement purposes, it does not entitle him to such credit for additional compensation purposes.

ANALYSIS

The special law involved in this matter, in relevant part, provides that:

⁶See section 110 of Pub. L. No. 100-238, 101 Stat. 1749-1750 (January 8, 1988), 5 U.S.C. § 8332 note (1988). See also 5 C.F.R. § 831.307 (1993) (creditability of contract service).

⁷See Civil Service Deposit Account Statement for Mr. Jerry W. Walters, dated September 17, 1991.

"(a) IN GENERAL.--

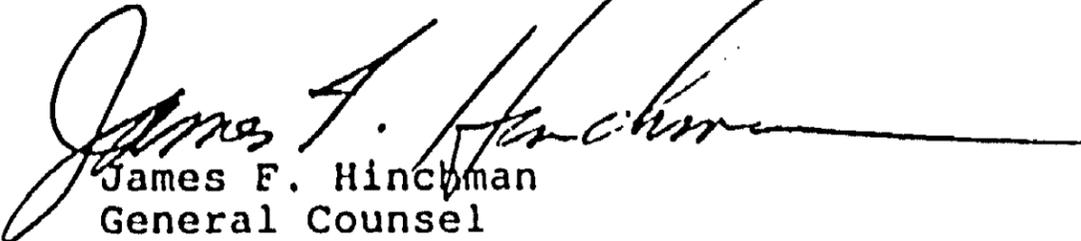
"(1) CONDITIONS FOR RECEIVING CREDIT.--Subject to the making of a deposit under section 8334(c) of title 5, United States Code, upon application to the Office of Personnel Management within 2 years after the date of the enactment of this Act (Jan. 8, 1988), any individual who is an employee (as defined by section 8331(1) or 8401(11) of such title) on such date shall be allowed credit under subchapter III of chapter 83 of such title [the Civil Service Retirement System] for any service if such service was performed--

"(A) before November 5, 1985; and

"(B) under a personal service contract with the United States, except as provided in paragraph (3)."

On its face, this statute is clear and unambiguous. It merely provides that credit for certain contract service, such as Mr. Walters performed, will be allowed under the Civil Service Retirement System. The text of this statute makes no provision whatsoever for payment of additional compensation beyond what the person involved has already been paid. Thus, under the plain meaning rule, while this statute entitled Mr. Walters to credit for his prior service as an intelligence case officer for retirement purposes, it does not entitle him to such credit for additional compensation purposes. See B-237546, Jan. 12, 1990, citing Sutherland, Stat. Const. § 46.01 (4th ed. 1984), and other cases cited therein. Thus, since Mr. Walters's contract service is not creditable for additional compensation purposes, the Bureau's highest previous rate rule cannot be applied to it.

Accordingly, Mr. Walters's claim is denied.


James F. Hinchman
General Counsel