

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-182300

DATE: DEC 4 1975

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u97633MATTER OF: Marshall S. Hellmann - Reconsideration of Claim
for Severance Pay

- DIGEST:
1. Former employee of U. S. Geological Survey, residing in Potomac, Maryland, who declined to accompany his activity when it moved from Washington, D. C., to Reston, Virginia, was separated for such refusal. He is not entitled to severance pay under provisions of 5 U. S. C. § 5595, since U. S. Civil Service Commission has determined that Potomac, Maryland, is in the same commuting area as Reston, Virginia, and hence employee would not have been compelled to change his residence.
 2. The refusal of an employee to accept an order of reassignment within the same commuting area, made in the best interests of the Government, constitutes insubordination, and as such comes under the general heading of misconduct. Under 5 U. S. C. § 5595, an employee is not entitled to severance pay if separated for cause based on misconduct.

This action is in response to a request by Mr. Marshall S. Hellmann, a former employee of the United States Geological Survey, Department of the Interior, for reconsideration of our decision in B-182300, January 16, 1975, in which we sustained the action of our Transportation and Claims Division in disallowing Mr. Hellmann's claim for severance pay.

The facts and circumstances, as well as the law and regulations pertinent to this claim, are contained in our prior decision and will not be repeated here except where necessary. In his letters of February 12 and March 14, 1975, Mr. Hellmann states that the meaning of "involuntary separation" as it appears in subchapter S11-2f, Federal Personnel Manual (FPM) Supplement 831-1, is for retirement annuity purposes and is not germane to his claim for severance pay. He contends that the definition of "involuntary separation" for retirement pay purposes is more stringent than that for severance pay.

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We cannot agree. The basic eligibility requirements are essentially the same with respect to entitlement to severance pay and to a discontinued service annuity. The Civil Service Commission (CSC) by letter of August 28, 1975, to our Office, expressed its views in connection with this issue, and stated in pertinent part, as follows:

"We agree that basic eligibility requirements for severance pay are essentially the same as for discontinued service retirement entitlement. It has always been viewed that way. * * *"

We again point out that the responsibility of determining the basis for a separation action, including a determination that the new assignment offered was or was not in the same commuting area, and the taking of such action are matters primarily within the jurisdiction of the CSC and the agency concerned.

The claimant states that the CSC regulation, 5 C. F. R. § 550.705 (pertaining to separation because of failure to accept an assignment), became effective after his separation date of November 23, 1973, and is therefore not applicable to his claim. We disagree because the regulation was published on July 7, 1971, in 36 Federal Register 12729, and became effective on that date.

Mr. Hellmann further contends that his position description did not provide for his assignment to Reston, Virginia; that his sworn statement shows there was never any written agreement or understanding for such assignment; that he had stipulated on his Standard Form 171 that he would accept assignment only in northwest Washington, D. C., or Montgomery County, Maryland; and that he had repeatedly informed his supervisors that he would not accept an assignment outside these geographical areas. None of these contentions are persuasive. They would apply only if the new assignment were in another commuting area. However, on that point, we believe our prior decision was correct and we have been supported by the Civil Service Commission in its letter of August 28, 1975, as follows:

"We agree with the Comptroller General decision B-182300, January 16, 1975, because of all of the reasons cited in that decision. Potomac, Maryland is in the same commuting area as Reston, Virginia. However, we would have said that

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Mr. Hellmann refused to follow an order, made in the best interests of the Government, which would amount to insubordination, a cause to justify discharge of an employee. See 50 Comp. Gen. 476, and 45 Comp. Gen. 811. In both decisions, employees refused to report to their new duty sites, just as Mr. Hellmann did, and were refused severance pay.

"The employee named in 50 Comp. Gen. 476 said that his Standard Form 57, Application for Federal Employment, showed that he would not accept employment outside of the area in which he resided. It has been stated by the Court of Claims that it is well known that Form 57 (now Standard Form 171) is to inform appointing officers, not to embody a contract of employment, and does not make an employee legally immune from reassignment. See *Burton v. United States*, 186 Ct. Cl. 172 (1968). Accordingly, and since refusal to accept an order of reassignment constitutes insubordination, and as such is within the general heading of delinquency and misconduct, we cannot agree with Mr. Hellmann's contentions. He even states in his enclosures that his refusal was for his personal convenience. * * *"

The severance pay provision, 5 U. S. C. § 5595, based upon its legislative history, was designed to provide for the employee who is "separated through no fault of his own." In the instant case, Mr. Hellmann was separated by the United States Geological Survey because he failed to report for duty upon reassignment to Reston, Virginia, which is in the same commuting area as his place of residence, Potomac, Maryland, after having been directed to do so by his agency.

In view of the determinations by the CSC that Potomac, Maryland, is in the same commuting area as Reston, Virginia, and that the refusal by Mr. Hellmann to accept the order of reassignment was for his personal convenience, it must be concluded that he would not have been compelled to change his residence to accompany his activity to Reston, Virginia.

Moreover, the CSC states that the denial of severance pay is justified on another ground, namely that the claimant's refusal to accept the order of reassignment constituted insubordination, a cause to justify discharge of an employee. Under the provisions of 5 U. S. C. § 5595, an

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employee is not entitled to severance pay if he is involuntarily separated from the service for cause. For this additional reason, we believe our earlier decision was correct.

Therefore, our decision of January 16, 1975, B-182300, in sustaining the denial of Mr. Hellmann's claim for severance pay is hereby affirmed.

(SIGNED) ELMER E. STAMPS

Comptroller General
of the United States