DOCUMENT RESUME

00805 - [A0590835]

[Retroactive Adjustment of Rate of Pay on Basis of Highest Previous Rate Held in Another Agency]. B-186554. December 28, 1976. 3 pp.

Decision re: Clifton A. Russell; by Robert F. Keller, Acting Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).
Contact: Office of the General Counsel: Civilian Personnel.
Budget Function: General Government: Other General Government (806).
Organization Concerned: District of Columbia: Dept. of Human Resources; Environmental Protection Agency; Veterans Administration: VA Hospital, New York, NY.
Authority: 5 C.F.R. 531.2035 U.S.C. 5334. B-175347 (1972). B-175349 (1972). B-177195 (1972).

Veterans Administration (VA) employee appealed the disallowance of his request for retroactive adjustment of pay rate on the grounds that he was payed at a higher rate at another agency. Established VA policy provides for official discretion on the application of the "highest previous rate rule"; therefore, the disallowance was sustained. (Author/SS)

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John Carter
Civ.Pers.

DECISION

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

FILE: B-186554 DATE: December 28, 1976

MATTER OF: Clifton A. Russell - Application of Highest Previous Rate Rule

DIGEST: VA employee requests retroactive adjustment of rate of pay on basis of highest previous rate held in another agency. Disallowance of claim by Claims Division, GAO, is sustained because agency has discretion regarding application of highest previous rate rule and appointing official set pay rate in accordance with established VA policy which gives such official discretion to establish rate of pay of employee transferred from another agency at any rate not to exceed his highest previous rate.

This matter is before us as the result of a request dated May 14, 1976, by Mr. Clifton A. Russell for reconsideration of a settlement issued by the Claims Division, General Accounting Office, on May 12, 1976, which disallowed his claim for retroactive adjustment of rate of pay and backpay.

The record shows that Mr. Russell was employed by the Veterans Administration Hospital, New York, New York, on December 22, 1974, as a Personnel Management Specialist with his rate of pay established at grade GS-9, step 4. The Veterans Administration advises that Mr. Russell previously was employed as a Position Classification Specialist, pay grade GS-11, step 1, for 8 months with the Department of Human Resources and for 6½ months with the Environmental Protection Agency. We presume that the Department of Human Resources refers to that agency of the District of Columbia Government. Mr. Russell contends that the Veterans Administration Hospital erred in not adjusting his rate of pay to a higher step level within pay grade GS-9 to reflect his previously held grade GS-11 and requests that his pay rate be adjusted to step 8 of grade GS-9 retroactive to December 22, 1974, with backpay from that date.

The establishment of an employee's rate of pay upon change of position or type of appointment is governed by regulations issued by the Civil Service Commission pursuant to section 5334 of title 5, United States Code (1970), and published in the Code

of Federal Regulations (CFR), title 5, section 531.203. These regulations state in pertinent part that "when an employee is reemployed, transferred, reassigned, promoted, or demoted, the agency may pay him at any rate of his grade which does not exceed his highest previous rate; however, if his highest previous rate falls between two rates of his grade, the agency may pay him at the higher rate." 5 C.F.R. 531.203(c) (1974). (Emphasis added.) We have consistently viewed this regulation as vesting discretion in the agency regarding application of the so-called "highest previous rate rule" in the establishment of an employee's rate of pay. See B-177195, December 14, 1972; B-175349, April 27, 1972; B-175347, April 21, 1972. Consequently, each agency is permitted to formulate its own policy regarding application of the rule.

The policy of the Veterans Administration (VA) with respect to determining an employee's rate of basic compensation and the application thereto of the highest previous rate rule, referred to by VA in its policy statement as the "earned rate rule," is set forth in VA Manual MP-5, Part I, Chapter 531, Section B. Subparagraph 4c of that section, in effect at the time of Mr. Russell's appointment, states that the highest previous rate to which an employee may have a vested right applies only to general schedule rates held in VA. There are additional situations in which application is also mandatory but they are not relevant in this case. Subparagraph 4e(7), which sets forth the policy with specific regard to transfers, states in pertinent part:

> " " " the earned rate rule will not routinely be applied in effecting transfer from another agency or branch of the Federal Government, whether by promotion, or change to lower grade, or otherwise. " " " Rather, the rate to be selected within the grade shall be that which in the authorizing official's judgment best represents equity to the employee and to the VA, taking into account the individual's qualifications as related to those possessed by other VA employees with whom he may work. The highest previous rate, if otherwise appropriate

> in the judgment of the authorizing official, shall be selected only if the service in which it was received meets the length and quality criteria specified in subparagraph d above."

This provision clearly places in the authorizing official the discretion to establish the pay rate of an employee transferring to VA from another agency at any rate not to exceed his highest previous rate.

In view of the above, we must conclude that there was nothing improper in the setting of Mr. Russell's rate of pay at step 4 of pay grade GS-3. Therefore, the disallowance by the Claims Division of Mr. Russell's claim is sustained.

Acting Comptroller General
of the United States