

DOCUMENT RESUME

01989 - [A1172153]

[Set Off of Annuity]. B-188520. April 21, 1977. 4 pp.

Decision re: Adrian E. Nelson; by Robert P. Keller, Deputy
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation
(305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel
Management (805).

Organization Concerned: Bureau of Reclamation.

Authority: Disaster Relief Act of 1974 (P.L. 93-288; 88 Stat.
146; 5 U.S.C. 3190(b)). 5 U.S.C. 8344(a). 53 Comp. Gen. 654.
53 Comp. Gen. 542. 53 Comp. Gen. 702.

Certifying Officer Nedra A. Blackwell requested a
decision concerning a Bureau of Reclamation employee receiving
an annuity who was rehired on a temporary basis. She questioned
the deduction of the amount of the annuity from the employee's
salary. Retired individuals rehired temporarily are required to
have their salaries reduced by the amount of annuities received.
(RRS)

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DECISION



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

*Civ. Per.
Wilcox*

FILE: B-188520

DATE: April 21, 1977

MATTER OF: Adrian D. Nelson - Set Off of Annuity

DIGEST: Subsection 309(b) of the Disaster Relief Act of 1974 provides for appointment of temporary personnel without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service. The salary of a retired civil service annuitant temporarily reemployed under that authority is required to be reduced by the amount of his annuity since the language of subsection 309(b) does not exempt individuals so appointed from the annuity set-off provisions of 5 U. S. C. § 8344(a).

This decision is rendered in response to a request from Nedra A. Blackwell, an authorized certifying officer for the Bureau of Reclamation, Department of the Interior, for a decision regarding the compensation entitlement of Adrian D. Nelson. Mr. Nelson is a retired Federal employee who receives an annuity under the Civil Service Retirement Act. He was rehired by the Bureau of Reclamation on a temporary basis under the Disaster Relief Act of 1974, Pub. L. 93-288, 88 Stat. 146, May 22, 1974. In connection with that reemployment, the Bureau of Reclamation has deducted the amount of Mr. Nelson's annuity from his salary pursuant to the set-off requirement of 5 U. S. C. § 8344(a). Mr. Nelson has questioned the necessity for set off of his pay and the certifying officer requests our decision as to the propriety of the set-off action taken.

Subsection 8344(a) of title 5 of the United States Code requires set off of the annuity of a reemployed civil service annuitant as follows:

"(a) If an annuitant receiving annuity from the Fund, except--

"(1) a disability annuitant whose annuity is terminated because of his recovery or restoration of earning capacity;

B-188520

"(2) an annuitant whose annuity is based on an involuntary separation from the service other than an automatic separation; or

"(3) a Member receiving annuity from the Fund;

becomes employed after September 30, 1958, or on July 31, 1958 was serving, in an appointive or elective position, his service on and after the date he was or is so employed is covered by this subchapter. Deductions for the Fund may not be withheld from his pay. An amount equal to the annuity allocable to the period of actual employment shall be deducted from his pay, except for lump-sum leave payment purposes under section 5551 of this title. * * *

The certifying officer raises a question concerning application of the above-quoted provision to Mr. Nelson's situation inasmuch as he was appointed under the following authority of subsection 309(b) of the Disaster Relief Act of 1974:

"(b) In performing any services under this Act, any Federal agency is authorized--

"(1) to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in competitive service."

The specific question posed is whether the language "without regard to the provisions of title 5, United States Code, governing appointments in competitive service" excepts individuals employed thereunder from the annuity set-off requirements of 5 U. S. C. § 8344(a).

With the exceptions noted in 5 U. S. C. §§ 8344(a)(1)-8344(a)(3), quoted above, and that provided at 5 U. S. C. § 8344c for Governors serving on the Board of Governors of the United States Postal Service, civil service annuitants reemployed by the Federal Government are subject to the annuity set-off provisions of 5 U. S. C. § 8344(a), unless otherwise specifically exempted. See 53 Comp. Gen. 654 (1974).

B-188520

The language of subsection 309(b) of the Disaster Relief Act of 1974, *supra*, providing that temporary personnel may be appointed without regard to title 5 provisions "governing appointments in competitive service" does not constitute either a specific exemption from the requirement of 5 U. S. C. § 8344(a) or a general exemption from all provisions of title 5. Rather, it serves merely to except temporary appointments under the Disaster Relief Act from the laws and regulations governing appointment to Federal employment. Similar language is contained in the following authority of 5 U. S. C. § 3109(b) for employment of experts and consultants:

"(b) When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services. Services procured under this section are without regard to--

"(1) the provisions of this title governing appointment in the competitive service* * *."

Services authorized to be secured under this subsection may be obtained on either an independent contract or an employment basis.

We have held that experts and consultants whose services are obtained under the authority of 5 U. S. C. § 3109 on an employment basis are subject to the provisions of 5 U. S. C. § 8344(a). For example, in 53 Comp. Gen. 542 (1974) we held that a purported contract for the expert services of a retired annuitant in fact contemplated performance of duties on an employer-employee basis and, as such, required set off of the individual's annuity against his salary. *Cf.* 53 Comp. Gen. 702 (1974).

Because the language of subsection 309(b) of the Disaster Relief Act of 1974 is similar to that of 5 U. S. C. § 3109(b) and does not specifically exempt annuitants temporarily employed

B-188520

thereunder from the set-off requirements of 5 U. S. C. § 8344(a), Mr. Nelson's compensation for services furnished under the Act was properly reduced by the amount of his retirement annuity.

Robert K. ...
Deputy Comptroller General
of the United States