

**DECISION**



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

*Entitlement to Environmental Differential Pay 10,594*

FILE: B-194289

DATE: June 27, 1979

MATTER OF: Victor C. Spencer -  
Environmental differential (cold work)

DIGEST: Authority to determine whether refrigeration mechanic at Veterans' Administration hospital meets the qualifications for payment of environmental differential pay (cold work) is primarily vested in agency concerned which has determined that the criteria to qualify for such pay have not been met for the period of time claimed. GAO will not substitute its judgment for the agency's in the absence of clear and convincing evidence that the agency's determination was arbitrary and capricious.

This action is in response to an appeal of a settlement of our Claims Division dated October 19, 1978, which disallowed Mr. Spencer's claim for environmental differential (cold work). The issue presented is whether the determination made by the Veterans' Administration (VA) that the employee did not meet the criteria to establish entitlement to environmental differential pay (cold work) for the period of time claimed was in error. The answer is in the negative.

In support of his claim Mr. Spencer asserts that during the period September 1970 through February 1976, he was employed as a refrigeration mechanic at the VA hospital, Fayetteville, Arkansas. That as a part of his regularly scheduled duties he was exposed to temperatures of 32°F or below for which he claims entitlement to environmental differential pay from November 1970 through February 1976 for a total of 835 hours. This figure was later reduced to 601 hours taking into account annual leave and the fact that the cold storage unit was out of operation from March 1972 through July 1972.

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The administrative report from the VA hospital asserts that Mr. Spencer was paid for 102 hours environmental differential for work in the walk-in meat freezer (cold work). These hours were supported by Engineering Service records including work orders and PMI reports. As to the remainder of the claim--hours in excess of 102 hours--the VA hospital director asserts that

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there are no official records to substantiate the claim. Mr. Spencer in addition to submitting estimates as to the number of exposures to temperatures of 32°F or below has submitted letters from a butcher and the maintenance foreman employed at the VA hospital to substantiate his claim concerning the temperature of the refrigeration unit.

(The VA administrative report cites the lack of official documentation to substantiate both the number of exposures and that refrigerator temperatures were maintained at lower than 32°F as reasons for determining that Mr. Spencer did not meet the criteria for environmental differential (cold work) for more than 102 hours.) In support of its position the VA has submitted a letter from the Chief, Dietetic Service, at the hospital to the effect that the Dietetic Service's policy concerning temperature of the walk-in refrigerated storage during the period in question was a constant 34°F or as near as possible.

Authority for payment of environmental differential pay is contained in Federal Personnel Manual (FPM) Supplement 532-1, Instruction 14. Subchapter S8-7 provides authority for the payment of environmental differentials for exposure to various degrees of hazards, physical hardships, and working conditions of an unusually severe nature. Appendix J of FPM 532-1, Instruction 14, May 31, 1978, provides for a 4 percent wage differential for working in cold storage or other climate-controlled areas where the employee is subjected to temperatures at or below freezing (32°F).

The rule with regard to evidence in support of claims is that in the absence of official records payment may be made on the basis of the most accurate estimate possible after consideration of all available records. Thus, we have held that in cases where it is known that over a period of time an employee has performed duty for which he is entitled to additional pay and doubt exists only as to the particular hours on which qualifying work was performed, payment may be based on the most reasonable estimate after consideration of all available records. 53 Comp. Gen. 789 (1974); 50 Comp. Gen. 767 (1971); and B-184797, September 16, 1976, and cases cited therein.

In the present case a dispute exists not only with regard to the number of exposures to cold work by Mr. Spencer, but also as

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to whether he was exposed to temperatures of 32°F or below for more than the 102 hours he has already been paid. The authority to determine whether the assigned duties of an employee involve situations for which environmental differential is authorized is vested primarily in the agency concerned. This Office will not substitute its judgment for that of agency officials who are in a better position to investigate and resolve the matter, unless we find clear and convincing evidence that the agency decision was wrong or that it was arbitrary and capricious. See B-181498, January 30, 1975, and decisions cited therein. The present record affords no basis for such a determination.

We decide cases involving claims against the Government on the basis of the written record. The claimant has the burden of proof of establishing the liability of the United States and the claimant's right to payment. 4 C.F.R. § 31.7. Therefore, if the written record before us presents a material dispute of fact that cannot be resolved without an adversary hearing, we are required to deny the claim because the claimant has failed to establish his claim. B-193559, April 27, 1979.

In view of the above, the disallowance of the claim by the Claims Division is sustained.

*R. F. Kettner*  
Acting Comptroller General  
of the United States