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PLM-11
Mr. Riedinger

DECISION



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

FILE: B-195062

DATE: January 10, 1980

MATTER OF: (Income Limitations for Reemployed)
Foreign Service Annuitants — *Name*

addressee

DIGEST: Subsection 1112(a) of title 22, United States Code, provides a limitation on the amount of annuity a Foreign Service annuitant may receive while reemployed by the Federal Government. The annuity, when combined with the salary the employee is entitled to receive in any calendar year may not exceed the annuitant's salary at retirement. The Department asks how the limitation with regard to salary earned in 1 year but not received until the next year should be applied. Our view is that the limitation should apply to the year when the salary would normally be paid in the usual course of actions.

We have been asked to rule on the interpretation of salary as used in section 872(a) of the Foreign Service Act, 22 U.S.C. § 1112(a), to determine the income limitation prescribed for Foreign Service annuitants who are reemployed in the Federal service.

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The submission from the Deputy Assistant Secretary for Budget and Finance, Department of State, states that the Department currently uses the date of salary payment for the purpose of establishing whether the income limitation has been exceeded. He states that this practice was instituted some time ago based on a legal opinion which concluded that the interpretation of the words "receive," "receives," and "receiving" as used in section 872 of the Foreign Service Act, supra, is to be given a literal interpretation and treated as meaning actually received. It is also pointed out that comparison consideration was given to the fact that when Congress wanted to use the concept "date of earning" rather than "receipt," it specifically so provided, citing to 5 U.S.C. § 8344(a).

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In contrast a recent legal opinion has put forth the view that the appropriate method for charging against the income ceiling should be the year in which the annuitant "normally would receive" the compensation, i.e., when the annuitant normally would be entitled to such earnings, regardless as to when it is actually received.

The Deputy Secretary goes on to state that they have two recent cases illustrating the impact of those interpretations. In the first instance the annuitant was reemployed effective November 21, 1978, with the personnel action issued on December 21, 1978. Under normal payment procedures any personnel action received in the paying office between December 17 and December 30, 1978 (a regular biweekly pay period), would be processed for payment on January 11, 1979, 12 days after the close of the period. Under the "receipt" view, the salary paid at that time and which would include salary from prior biweekly pay periods, would be applied against the 1979 calendar year ceiling for section 872(a) purposes. It is pointed out, however, that such action would reduce the annuitant's availability for work in 1979. Under the "entitlement" theory, a portion of that salary payment would be applied against the 1978 income ceiling for section 872(a) purposes and would permit the Department to use the annuitant's services to a greater extent in 1979, without exceeding the statutory limitation. Of course, the Department can use the annuitant full time; however, his annuity would be reduced accordingly.

In the second case, the personnel action was issued on April 17, 1979, showing an effective date of September 1, 1978. The impact under the salary receipt interpretation is the same as before, except that because of the longer period of time involved, the large retroactive payment made would significantly reduce the annuitant's availability for work in 1979 without exceeding his income limitation for 1979.

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We have received a letter from Mr. Ben F. Dixon, indicating that he is the individual involved in this particular case. Mr. Dixon argues that the amounts that should have been paid him in 1978 but were not paid because of a failure to process his appointment should not be counted against the total salary he may earn in 1979 without forfeiting part of his retirement annuity. He also states the opinion that there is no conflict in legal analysis within the Department regarding this problem but that it is agreed that salary earned should be charged to the year when paid in the normal course of payroll actions. He believes that no position has been taken with respect to salary payments which are delayed and paid out of the normal cycle.

The departmental submission points out that for income tax purposes, the salary payments in both cases are properly reportable to the Internal Revenue Service as 1979 income since it was received by the annuitant in 1979. As a result, the submission suggests that current payrolling practices should be retained, since it is indicated that under the "entitlement" interpretation the Department would be required to maintain dual records.

Title VIII of the Foreign Service Act of 1946, as amended, enacted the current retirement and disability system for the Foreign Service, which provisions are contained in subchapter VIII of title 22, United States Code (1976), 22 U.S.C. §§ 1061-1121. Section 872 of that act, as added by section 44 of the act of September 8, 1960, Public Law No. 86-723, 74 Stat. 831, 846, 22 U.S.C. § 1112, relating to the reemployment of Foreign Service annuitants, provides in pertinent part:

"(a) * * * any officer or employee of the Service, who has retired under this chapter and is receiving an annuity pursuant thereto, and who is reemployed in the

Federal Government service * * * shall be entitled to receive the salary of the position in which he is serving plus so much of his annuity payable under this chapter which when combined with such salary does not exceed during any calendar year the basic salary such officer or employee was entitled to receive under sections 867 or 870 of this title, on the date of his retirement from the Service. Any such reemployed officer or employee who receives salary during any calendar year in excess of the maximum amount which he may be entitled to receive under this subsection shall be entitled to such salary in lieu of benefits hereunder."

Section 1061(b) title 22 U.S.C. directs that the Secretary shall administer the retirement system in accordance with the rules and regulations established under section 1061(a) and with the principles established by the retirement law.

It is a rule of statutory construction that where there is no ambiguity in the terms of the statute the plain meaning of the words as they are ordinarily understood will control. However, it is also a rule of statutory construction that single words must be considered within the context, general scope and object of the provisions in order to ascertain intent. 46 Comp. Gen. 47, 50 (1966). Also, the interpretation of a statute by those charged with the duty of enforcing it will be given great weight in determining its meaning.

It is evident from the language of section 872(a), that its purpose is to limit the amount of annuity a Foreign Service annuitant may receive if reemployed by the Federal Government. While no ceiling is imposed on the amount of the annual salary which the annuitant may earn, his annuity is withheld to the extent it, when combined with annual salary, exceeds the salary.

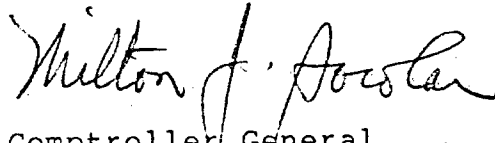
he received at the time of retirement. Since section 872(a), restricts payment of the annuity on a calendar-year basis, it would be more reasonable that salary entitlement be determined and applied against such calendar year.

The question as we see it does not relate to the receipt of salary in the normal course. All are agreed that it is appropriate to consider the normal date salary is received rather than the date worked and on which entitlement accrues in computing yearly salary. The question which does not appear to be settled in the Department and which Mr. Dixon addresses is whether the Department must credit salary when received even though payment has been delayed beyond the normal receipt date due to the administrative inadequacies. Mr. Dixon says that a strict interpretation of the words of the statute would reduce the amount he may earn during 1979 by over \$10,000. He says that this amount, which would normally have been paid in 1978, was not paid until 1979 because the Department failed to process his employment papers on a timely basis.

The obvious purpose of section 872 was to prevent an employee who retires from going back to work for the Government and receiving his annuity plus full salary for the position occupied except to the extent authorized by the statutory limitation. Although the words used to implement this restriction as noted in the submission are different from those used in 5 U.S.C. § 8344(d)(2) regarding reemployment of individuals subject to civil service retirement, taking into account the purpose of section 872 as well as the use of the word receive, we believe that the interpretation permitting allocation of the salary to the year in which the annuitant is entitled to be paid in the normal course of payroll actions is the more reasonable one. Further, in view of the Secretary's authority under section 801 of the act it seems that administrative practices could be implemented to provide for appropriate reductions

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in annuities, on that basis without causing an undue administrative burden.

A handwritten signature in cursive script, reading "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name.

For The Comptroller General
of the United States