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DECISION



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

FILE: B-196674

DATE: January 23, 1980

MATTER OF: Mr. Leroy W. Potter

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DLB 925*

DIGEST:

A Government employee separated under a RIF in 1959, was placed on reemployment priority listing authorized by 5 C.F.R. 20.7 (1959). When separated employee accepted full-time nontemporary Government employment in 1960, his name was removed from list and fact that he resigned from that position shortly thereafter would not qualify him for restoration to that list. Thus, for period after 1960 while seeking Government employment, his rights to be so employed were the same as others with equal veterans preference seeking such employment and neither 5 U.S.C. 652(b) (1958) nor 5 U.S.C. 5596 are applicable.

This action is in response to a letter dated October 22, 1979, from Mr. Leroy W. Potter, concerning his entitlement to backpay, annual and sick leave, and retirement credits from sometime in the latter part of 1959 to October 29, 1973. The basis for the claim is the assertion that he was wrongfully denied employment as a sign painter by the Department of the Air Force, at Vandenberg Air Force Base (AFB), California.

The matter of this claim was the subject of a settlement by our Claims Division dated September 11, 1975, which disallowed that portion of his claim which antedated May 15, 1965, based on the provisions of the barring act. The remainder of the claim was disallowed for the reason that while he had been a Federal employee separated under a reduction-in-force action in 1959, since his status as a separated career employee was terminated in 1960, he no longer qualified for employment protection under the provision of 5 U.S.C. 652(b) (1958) and 5 U.S.C. 5596.

Mr. Potter contends in effect that he did not lose his status as a separated career employee following his

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reduction-in-force action in 1959, because there was a position available at Vandenberg AFB; he was fully qualified for it and did apply; and that his priority rights were violated.

The file shows that Mr. Potter, who had a career appointment as a Printer Foreman with the Army Disciplinary Barracks, Lompoc, California, was separated from that position effective August 21, 1959, due to a reduction in force. He was offered a transfer to Fort Leavenworth, Kansas, which he declined to accept for personal reasons. In February 1960, Mr. Potter was offered a position at South Vandenberg AFB, which he also declined to accept. In March 1960, he was offered another position there which he did not accept for physical reasons, even though a prior medical examination had found him physically fit for the position. On August 29, 1960, Mr. Potter accepted employment with the Corps of Engineers, but resigned that position effective September 30, 1960.

By letter dated September 20, 1960, Mr. Potter filed a complaint with the Civil Service Commission that as a separated career employee he was unfairly barred from a position as a sign painter at Vandenberg AFB, a position which he had previously applied for and which became vacant in April 1960 due to the death of the incumbent. The alleged refusal of officials at Vandenberg AFB to accept him for the position at that time was investigated by the Civil Service Commission in 1960 and in 1971 by the Air Force. According to the file, those investigations concluded that the allegations were without foundation.

Mr. Potter contends that his basic rights which were violated were those which he enjoyed as a separated career employee as a result of the 1959 reduction in force. It is upon that premise that he asserts entitlement to backpay, annual and sick leave and retirement point credits for the period 1959 to 1973, less that period prior to 1965.

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It does not appear that he qualified for reemployment rights incident to reduction in force as a separated career employee for the period subsequent to May 15, 1965.

The file shows that when his employment at the Lompoc Army Disciplinary Barracks was terminated due to a reduction in force in 1959, he was advised by letter dated July 17, 1959, that for the purpose of their reemployment priority listing for all Department of the Army positions in the Leavenworth and the Lompoc areas he was placed in retention group I. That letter went on to say:

"* * * Employees on this list will be given priority for placement for a period of two year(s) for Group I employees from the date of their separation by reduction in force. Your name will be removed from the reemployment priority list (1) upon your written signed request; (2) upon acceptance of full time nontemporary Federal employment; (3) upon declination of nontemporary reemployment at a grade level equivalent to that from which separated; or (4) expiration of time limit set forth above. * * *"

The foregoing was in accordance with regulations contained in 5 C.F.R. 20.7(a) during the period in question.

Effective August 29, 1960, Mr. Potter accepted full-time employment in a nontemporary position with the Corps of Engineers. As a result, such reemployment priority status as he enjoyed as a RIF'ed employee terminated. Following his resignation from that position, such rights as he may have had were the same as others with equal veterans preference rating seeking employment with the Federal Government.

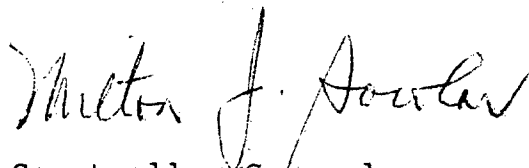
The investigation of Mr. Potter's allegations of violations of his rights which he requested of the Civil Service Commission was conducted by them pursuant to

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authority contained in part 05 of 5 C.R.F. (1960). It was concluded that the employment practices at Vandenberg AFB did not violate the requirements of law or the Civil Service Rules and Regulations.

Thus, it is our view that for the period 1965 to 1973, since he was not a separated career employee with a reemployment priority status, he has no claim for backpay, annual or sick leave credits. With regard to retirement point credits, such matters come within the exclusive jurisdiction of the Civil Service Commission. See 5 U.S.C. 8347(a).

Accordingly, the action taken by our Claims Division is sustained.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States