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DECISION



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

FILE: B-197885 *[Request for]* DATE: December 30, 1980

MATTER OF: Jimmie L. Tyus - Environmental Differential Payment

DIGEST: Authority to determine whether employee of Veterans' Administration hospital meets the qualifications for payment of environmental differential pay for 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.

Mr. Jimmie L. Tyus, (a food service worker) at the Veterans Administration Medical Center in Birmingham, Alabama, appeals the settlement issued by our Claims Division, which denied him retroactive payment of environmental differential for cold work performed between May 1, 1973, and January 3, 1976. Because the Veterans Administration (VA) hospital director found that Mr. Tyus was not eligible for environmental differential, and Mr. Tyus has come forward with no evidence to dispute this determination, we must deny his claim.

Mr. Tyus claims that between May 1, 1973, and January 3, 1976, his job as a food service worker required him to enter the VA hospital freezer 5 or 6 times each day. (Since the hospital's dietetic service did not retain duty schedules or work assignment records for the years in question, it is impossible to determine precisely (or even approximately) how many times Mr. Tyus was assigned to obtain food from the freezer. Where pertinent records are unavailable, however, the Comptroller General has approved payment of environmental differential for an estimated number of hours, where such estimate is based upon available records of the employee's job duties and work assignments over a

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corresponding period of time. 53 Comp. Gen. 789 (1974), affirmed January 2, 1976.

In order to prepare an estimate, the VA medical center conducted a study between February 15, and March 27, 1976. The data compiled was adjusted to allow for changes in tours of duty and position responsibilities, and the termination of employees prior to the study. A claim was filed for each employee who had responsibility for entering the freezer, and all dietetic employees were informed of the procedures involved. Evidently the study (which is not part of the record) revealed that Mr. Tyus was not entitled to environmental differential because the hospital did not file a claim on his behalf. Nor did he file a claim on his own behalf at this time. Instead he delayed 2 years before filing the claim at issue here.

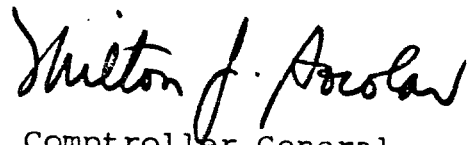
Federal Personnel Manual Supplement 532-1, paragraph S8-7f(1) (May 31, 1978) authorizes an agency to pay the environmental differential specified in appendix J to a prevailing rate employee when he or she performs assigned duties involving the conditions listed in appendix J. However, paragraph S8-7g(2) of the regulations requires each "installation or activity" to evaluate its situations to determine whether they are covered by the categories defined in appendix J. Accordingly, the authority to determine whether the assigned duties of an employee involve situations for which an environmental differential is authorized in appendix J is vested primarily in the agency concerned. Cecil C. Frederici, B-197142, February 12, 1980.

The director of the VA Medical Center concluded that Mr. Tyus' duties as a food service employee did not involve situations for which a cold work differential would be payable. In the absence of clear and convincing evidence negating the information contained in the administrative report of the agency, or which indicates that the agency determination was arbitrary and capricious, the General Accounting Office will not substitute its judgment for that of

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agency officials who are in a better position to investigate the rights and obligations of the parties. Victor C. Spencer, B-194289, June 27, 1979; B-181498, January 30, 1975. Mr. Tyus has presented no such evidence.

In view of the above, Mr. Tyus' claim for retro-active payment of environmental differential for cold work is therefore denied.



Acting Comptroller General
of the United States