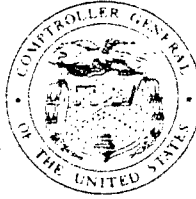


15951 Mr. Goddard

DECISION



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

FILE: B-199459

DATE: January 23, 1981

MATTER OF: James E. Butler - Severance Pay

DIGEST: Employee holding appointment without time limitation at HEW voluntarily transferred to Interior to accept excepted appointment with time limitation at higher grade and was subsequently involuntarily separated due to lack of funds. He is not entitled to severance pay since separation from appointment without time limitation at HEW was not involuntary. 5 C.F.R. 550.704(b)(4)(i). Alleged procedural error in involuntary separation from Interior has no bearing on entitlement to severance pay.

This is an appeal from the disallowance of the claim for severance pay of Mr. James E. Butler, who was separated from the National Park Service, Department of the Interior.

The record before us shows the following. Mr. Butler, who was formerly employed with the Department of Health, Education and Welfare under a career-conditional appointment, voluntarily transferred to the National Park Service of the Department of the Interior on October 9, 1977, without a break in service, to accept an excepted-appointment not to exceed 18 months at a higher grade. This appointment was extended on April 9, 1979, but on May 18, 1979, Mr. Butler was terminated due to a lack of funds.

Mr. Butler believes he is entitled to severance pay under the provisions of Federal Personnel Manual (FPM) chapter 550, section S7-3(2)(ii). The above reference excludes from entitlement to severance pay:

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"An employee serving under an appointment with a definite time limitation, except one so appointed for full-time employment without a break in service of three days or more, following service under one of the appointments listed in 7-3(b)(1) above."

Mr. Butler also states that he was not given a 30-day notice of his separation and the Park Service has recommended to the Merit Systems Protection Board that he be retroactively restored to duty for a period to satisfy the 30-day advance notice requirement. He believes that the agency error may have an impact on his entitlement to severance pay.

Regardless of the above-mentioned procedural error which occurred when Mr. Butler was separated, however, Mr. Butler's entitlement to severance pay is governed by 5 U.S.C. 5595 and the regulations promulgated thereunder.

The provision cited by Mr. Butler is a restatement of a provision of the governing law, section 5595(a)(2)(ii) of title 5, United States Code. Section 550.704(b)(4)(i) of title 5, Code of Federal Regulations, also found at FPM Supp. 990-2, book 550, section S-7-5 b(4)(i), amplifies this provision as follows:

"For entitlement to severance pay under section 5595(a)(2)(ii) of title 5, United States Code, the appointment without time limitation must be one of the appointments specified in section 550.701 (b)(1) and the termination from that appointment must have resulted from an involuntary separation not by removal for cause on charges of misconduct, delinquency, or inefficiency."

The record shows that Mr. Butler voluntarily transferred from HEW to the Park Service. Accordingly 5 C.F.R. § 550.704 (b)(4)(i) bars Mr. Butler from receiving severance pay as the separation from his appointment without

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time limitation at HEW was not involuntary. The disallowance of Mr. Butler's claim is therefore sustained.

Milton J. Sorolan

For The Comptroller General
of the United States