

## DECISION



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

FILE: B-199913

DATE: June 30, 1981

MATTER OF: Claim for Disability Retirement

DIGEST: Where agency accepted employee's resignation but employee was so mentally ill at time of resignation that he was incapable of making a rational decision, the resignation would be for cancellation under the rule in 39 Comp. Gen. 89. In this case, any claim resulting from such action is barred under 31 U.S.C. 71a. However, entitlement to a disability retirement annuity is within the jurisdiction of the Office of Personnel Management not GAO, and his claim for such annuity should be presented to that office.

This action is in response to a request by the Assistant Secretary of the Army (Installations, Logistics and Financial Management), for an advance decision as to whether the Department of the Army may retroactively cancel the resignation of an employee from his employment with the Department of the Army. In addition, we are asked about the employee's entitlements should his separation by resignation be cancelled.

The employee had been employed as a Supervisory Management Analyst, GS-11, with the U.S. Army Logistical Command, Leghorn, Italy, at the time of his resignation effective August 4, 1959. He had been employed by the Army since 1952.

The record shows that on May 11, 1959, the employee submitted a written resignation from his employment with the Army. The stated reason for his resignation was that he wished to establish his own business. Subsequent to the submission of his resignation he asked that it be withdrawn. Such request was denied and his resignation became effective on August 4, 1959. He is presently receiving a civil service retirement annuity which commenced on February 17, 1977, the date he reached age 62.

On February 20, 1980, he requested that his resignation of August 4, 1959, be cancelled on the basis that he was mentally ill at the time he submitted his resignation. Furthermore, he requests that he be awarded

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a disability retirement and that all his rights and benefits be restored incident to the cancellation of his separation, including coverage in the Federal Employees Group Life Insurance Program and the Federal Employees Health Benefits Program.

In a report dated June 23, 1980, the Surgeon General of the Army summarized the clinical record pertaining to this employee. The Surgeon General states that the employee first experienced severe emotional difficulties in 1956. He was hospitalized at the Army Hospital, Vincenza, Italy, in June 1959, and he was diagnosed there as having a manic episode. The report also states that the employee has been permanently disabled since his resignation and has been unable to engage in any kind of gainful work. The Surgeon General also states that there is substantial documentation that at the time of his resignation the employee had a severe mental illness which severely impaired his judgment and ability to make rational decisions. The report concludes that it is the opinion of the Surgeon General's Psychiatry and Neurology Consultant that the employee had a medically disabling condition at the time of his resignation which would ordinarily be the basis for medical disability retirement.

The agency advises that it believes that the request for cancellation of the resignation is not unreasonable, since under the circumstances in this case, the employing activity should not have accepted his resignation but should have instead requested his disability retirement.

We have held that the separation of an employee with a mental disability was invalid where the employing agency effected the separation without either first filing an application for disability retirement in behalf of the employee or advising him of his eligibility for such retirement. 39 Comp. Gen. 89 (1959). Our holding in that case was largely based on the decision in                      v                     , 263 F.2d 903 (D.C. App. 1959), wherein the court in effect held that there is a duty on a Government agency not to separate an employee because of disability if such employee has the necessary service to qualify for disability

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retirement. We stated in 39 Comp. Gen. 89<sup>X</sup> supra, that the reason for the holding in the case of            v.           , supra, is even more apparent where the disability resulting in the separation of an employee is a mental condition which impairs his judgment thus preventing his making a rational decision. Under such circumstances we have not objected to the agency's cancelling the resignation. See also B-141660, <sup>X</sup>January 14, 1960, and B-143028, <sup>X</sup>August 2, 1960.

Since the employee's resignation was submitted and effected subsequent to the decision in            v. <sup>X</sup>          , the holding in 39 Comp. Gen. 89<sup>X</sup> permitting revocation of a resignation in this type of situation, would be applicable. However, in view of the 6-year statute of limitations applicable to claims before this office -- the act of October 9, 1940, ch. 788, 54 Stat. 1061, as amended by section 801 of Public Law 93-604, approved January 2, 1975, 88 Stat. 1965, 31 U.S.C. <sup>X</sup>71a -- we have no jurisdiction to consider any claim that might arise in this case.

The matter as to whether he is entitled to disability retirement is within the jurisdiction of the Office of Personnel Management (OPM) which has sole responsibility for the administration of the civil service retirement system which includes the authority to determine questions of disability and to adjudicate all claims arising under the retirement system. See 5 U.S.C. § 8347(a)(b), <sup>X</sup>and (c). <sup>X</sup>Accordingly, we have no jurisdiction to make determinations with respect to annuity entitlements and, therefore, that is a matter for consideration by the OPM. The determination as to whether the employee is entitled to a disability retirement will also determine whether he is eligible for coverage under the Federal Employees Group Life Insurance Program and the Federal Employees Health Benefits Program. See 5 U.S.C. §§ 8706(b)(1); <sup>X</sup>8901(3)(A) <sup>X</sup>and 8905(b). <sup>X</sup>

In accordance with the above, the matter should be submitted to the Office of Personnel Management for a determination as to the employee's entitlement to disability retirement.

*Milton J. Aarlan*

Acting Comptroller General  
of the United States