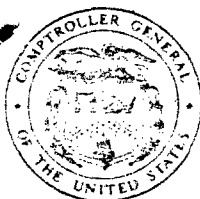


DECISION

18603
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

PLM-2
Easterwood

FILE: B-200852

DATE: June 24, 1981

MATTER OF: William C. Scott - [Retention of Compensation Incident to Reduction in Force]

DIGEST: Two-year save pay period provided in Subchapter S9 of Federal Personnel Manual Supplement 532-1 for a downgrading from a General Schedule position to a wage schedule position incident to Reduction in Force is not terminated by subsequent downgrading from the wage schedule position to a General Schedule position. However, a portion of the claim that accrued more than 6 years before claim was filed in GAO is barred by 31 U.S.C. 71a, and GAO has no authority to waive or modify its provisions.

This action is the result of an appeal from a settlement of our Claims Division dated March 11, 1980, which denied the claim of Mr. William C. Scott for retained pay incident to a reduction-in-force (RIF) action, in which he was downgraded from a General Schedule (GS) position to a wage schedule position. His claim was also considered barred under 31 U.S.C. 71a, since it was not filed in this Office within 6-years from the date it accrued. The issue in this case is whether a subsequent RIF to a lower GS position terminated the retained pay generated by the initial RIF. For the following reasons the claim is allowed in part.

The National Aeronautics and Space Administration (NASA) pursuant to a RIF downgraded Mr. Scott, one of its employees, from a GS-11, step 4 position to a WG-5, step 3 position on October 3, 1971. As a result he became entitled to retained pay of his GS-11, step 4 position for 2 years according to the provisions of the Federal Personnel Manual (FPM) Supplement 532-1, unless earlier terminated by conditions specified in the Supplement. A subsequent RIF reduced Mr. Scott from his WG-5, step 3 position to a GS-4, step 10 position on June 30, 1972. At this time the retained pay of the GS-11, step 4 position was discontinued in accordance with NASA's interpretation of paragraph S9-6 of FPM Supplement 532-1. Mr. Scott filed a claim for retained pay in our Office on April 18, 1979, for the higher pay for the period June 30, 1972, through October 2, 1973.

Subchapter S9 of FPM Supplement 532-1, in effect at the time, controls Mr. Scott's entitlement to saved pay. The introduction to paragraph S9-3 provides:

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"* * * an employee's scheduled rate of pay is retained when he is changed to a lower grade or reassigned to a wage-schedule position having an established maximum rate of pay which is less than the employee's existing schedule of pay."

Mr. Scott met the eligibility requirements in paragraph S9-3b. Paragraph S9-3d provides as follows: "Pay retention period. An employee's pay is retained under this policy for a period of two years unless it is terminated earlier by one of the following conditions * * *." Mr. Scott argues that since none of the conditions listed in paragraph S9-3d applied to his situation, he is entitled to 2 years of salary retention after the initial RIF on October 3, 1971.

The basis for our Claims Division's affirmance of NASA's early termination of the 2-year period upon Mr. Scott's second RIF, June 30, 1972, is paragraph S9-6 of FPM Supplement 532-1, which states:

"Employees who are changed from wage schedule to General Schedule pay category are not covered by this policy. Pay is retained for employees under this circumstance only in certain cases of conversion expressly provided for under other regulations of the Civil Service Commission."

There is no question that Mr. Scott moved from a wage schedule to a General Schedule category in the second RIF and that no new 2-year period of pay retention began at that point. However, we do not view this provision as terminating retained pay entitlement from an earlier RIF.

In that connection, paragraph S9-3f of FPM Supplement 532-1 deals with situations of consecutive changes to lower grade similar to Mr. Scott's situation. It states:

"Further change to lower grade or reassignment during pay retention period. When, during a 2-year pay retention period, an employee is further changed to lower grade or reassigned under

conditions entitling him to pay retention, he continues for the remainder of the 2-year period to receive the same retained rate. At the time, however, of the further change to lower grade or reassignment a record is made of the retained rate the employee would have been entitled to on the basis of the change to lower grade or reassignment if he had not then been in a retained pay status. At the expiration of the original 2-year period, this new rate is used as the retained pay rate for the remainder of a 2-year period beginning on the date of the subsequent change to lower grade or reassignment."

Under this provision the second reduction in grade has no effect on the 2-year period of pay retention generated by the first. The second change to lower grade merely effects a new pay retention period paid at a lower rate than the old, which begins at the cessation of the old pay retention period. The same definitional scheme applies to paragraph S9-3f as did to the introduction to paragraph S9-3. Changes to a lower grade do not include changes to a lower grade General Schedule position from a wage schedule position. Remedial legislation was enacted covering such situations. However, it was enacted after Mr. Scott's situation arose and is not applicable to his case. See Public Law 92-392, August 19, 1972, 86 Stat. 573. Therefore, paragraph S9-3f does not apply to Mr. Scott's second RIF, and we have found no statute, regulation, or decision which specifically addresses Mr. Scott's situation on June 30, 1972. However, we believe that it is appropriate to apply the principle found in paragraph S9-3f, that the initial 2-year pay retention period is unaffected by a subsequent change to a lower grade.

However, Mr. Scott's claim accrued on June 30, 1972, the date the retained pay was discontinued. At that time 31 U.S.C. 71a (1970) provided a 10-year period from the date of accrual of a claim for filing in the GAO in order to avoid being forever barred. Subsequently, section 801 of the General Accounting Office Act of 1974, approved January 2, 1975, Public Law 93-604, substituted a 6-year period for the 10-year period in 31 U.S.C. 71a. This 6-year time period applies to Mr. Scott's claim, even though his claim accrued before 1975, and our Office is without authority to waive or

B-200852

modify the provisions of 31 U.S.C. 71a (1976). Wesley L. Goecker, 58 Comp. Gen. 738 (1979); Freddie L. Baker, B-190841, December 27, 1978. Therefore, Mr. Scott had to file his claim with GAO by June 30, 1978, to protect the entire time period of his claim for retained pay. Since he did not file until April 18, 1979, all retained pay that he may have been entitled to which was earned from June 30, 1972, through April 17, 1973, is barred from our consideration.

Accordingly, since paragraph S9-3 of FPM Supplement 532-1 entitled Mr. Scott to 2 years of saved pay ending October 2, 1973, which was not affected by his second RIF on June 30, 1972, Mr. Scott may be paid the difference between his saved pay rate and the rate actually paid him for the period which was not barred by the 6-year statute of limitations. Settlement will be issued accordingly.



Acting Comptroller General
of the United States