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DECISION

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

FILE: B-202105 DATE: July 7, 1981

MATTER OF: Gerald M. Hegarty - Arbitration Award - GAO jurisdiction

DIGEST: Employee, whose claim for higher exposure environmental pay was denied by our Claims Group, requests reconsideration on basis of Arbitrator's award under labor-management agreement. In accordance with 4 C.F.R. § 21.7(a) payments made pursuant to an arbitration award which is final and binding under 5 U.S.C. § 7122(a) or (b), are conclusive on GAO and this Office will not review or comment on the merits of the award. To the extent that the employee's request places in issue the finality or propriety of implementation of Arbitrator's decision, GAO, under 4 C.F.R. § 21.8, will not issue a decision. Those issues are more properly within the jurisdiction of the Federal Labor Relations Authority, pursuant to Chapter 71 of title 5, United States Code.

Mr. Gerald M. Hegarty, an employee at the Veterans Administration Hospital, Lincoln, Nebraska, requests reconsideration of his claim for environmental differential pay (EDP) for exposure to micro-organisms with a high degree of hazard. Mr. Hegarty's claim was denied by our Claims Group's settlement Z-2707054 of May 16, 1979, which determined in part as follows:

> "The Veterans Administration has determined that you are entitled to differential pay for low degree hazard only. The General Accounting Office will not substitute its judgment for that of agency officials who are in a better position to investigate and determine the rights and obligation of the parties, in the absence of clear and convincing evidence which indicates that the agency determination was arbitrary and capricious."

Mr. Hegarty's request for reconsideration is premised on an Arbitrator's final decision dated November 13, 1980, which concludes that maintenance personnel at the hospital

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in question do work in close proximity to micro-organisms under both the high and low degree risk circumstances. The Arbitrator's decision, a copy of which Mr. Hegarty has enclosed with his request, discusses the issues which formed the basis of Mr. Hegarty's original claim. The Arbitrator decided that the maintenance workers at the hospital are entitled to some allowance for environmental differential pay. However, under the applicable collective bargaining agreement, he limited the award of EDP to the period beginning 15 days before the grievance was filed.

In view of the decision of the Arbitrator in his case, Mr. Hegarty now asks this Office to review our Claims Group's settlement of his claim for EDP back to November 1, 1970, and to grant his claim for the entire period on the basis that the arbitrator's decision proves that the VA's action was arbitrary and capricious.

In accordance with our "Procedures for Decisions on Appropriated Fund Expenditures Which Are of Mutual Concern to Agencies and Labor Organizations," 45 Federal Register 55689, August 21, 1980, set out at Part 21 of title 4, Code of Federal Regulations, we will neither review nor comment on the decision of the Arbitrator and we will not review Mr. Hegarty's claim on the basis of the Arbitrator's decision.

We issued these procedures in order to inform both labor and management in the Federal sector of our present policies in light of the enactment of the Civil Service Reform Act of 1978, Public Law 95-454. The procedures govern requests for GAO decisions concerning the legality of appropriated fund expenditures on matters of mutual concern to Federal agencies and labor organizations participating in the labor-management program established pursuant to Chapter 71 of title 5, United States Code, and other Federal sector labor-management programs. They give labor organizations and Federal agencies equal access to GAO on any matter of mutual concern involving the expenditure of appropriated funds, and extend the right to request an advisory opinion on such matters to arbitrators and other neutral parties. They also provide guidance as to when GAO will defer to procedures established pursuant to Chapter 71 of title 5, United States Code.

In accordance with 4 C.F.R. § 21.7(a), an arbitration award which is final and binding under 5 U.S.C. § 7122(a) or (b)

will be considered conclusive on GAO in its settlement of accounts and we will not review or comment on the merits of such an award. However, such an award does not constitute precedent for payment in other instances not covered by the award. Moreover, under 4 C.F.R. § 21.8, we retain the discretion not to issue a decision on any matter which we find is more properly within the jurisdiction of the Federal Labor Relations Authority or other administrative body or court of competent jursidiction.

In accordance with the jurisdictional policies set out above which we believe recognize the intent of Congress in enacting Chapter 71 of title 5, United States Code, as part of the Civil Service Reform Act of 1978, and in recognition of the important role of labor organizations and collective bargaining in the civil service, we will not review or comment on the merits of this arbitration decision and award which were rendered under chapter 71 of title 5, United States Code. Similarly, to the extent that Mr. Hegarty's request for our decision calls into question the finality of the Arbitrator's decision or the propriety of its implementation, such issues are more properly within the jurisdiction of the Federal Labor Relations Authority.

Milton J. Socolar

Acting Comptroller General
of the United States