Graham

DECISION

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

FILE: B-204409 **DATE:** May 23, 1983

MATTER OF: William C. Ragland - Claim For Salary Retention - Res Judicata

DIGEST:

An employee seeks a Comptroller General decision on his entitlement to salary retention. The General Accounting Office adheres to the doctrine of res judicata to the effect that the valid judgment of a court on a matter is a bar to a subsequent action on that same matter before the General Accounting Office. 47 Comp. Gen. 573 (1968). Since in William C. Ragland v. Internal Revenue Service, Appeal No. 55-81 (C.A.F.C. November 1, 1982), it was previously decided that the employee was not entitled to saved pay benefits; the General Accounting Office will not consider his claim for salary retention.

Mr. William C. Ragland seeks a Comptroller General decision on his entitlement to salary retention. The United States Court of Appeals for the Federal Circuit specifically decided in this same matter that he was not entitled to saved pay benefits. Wiliam C. Ragland v. Internal Revenue Service, Appeal No. 55-81 (C.A.F.C. November 1, 1982). The issue is whether the General Accounting Office will consider his claim in light of the previous judgment of the United States Court of Appeals for the Federal Circuit denying it. We conclude that his claim will not be considered, because it is barred by our application of the doctrine of res judicata.

Mr. Ragland was an employee of the Internal Revenue Service in Washington, D.C. When his position was eliminated, he was reassigned to a position at the same grade in Houston, Texas. He believed this position to be a "sham," which would be abolished after he relocated. Prior to his reporting for duty in Houston, he accepted a lower-graded position with another unit of the Internal Revenue Service in Washington, D.C. He signed a statement indicating that he voluntarily accepted the lower-graded position.

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Under 5 U.S.C. §§ 5362 and 5363 (Supp. IV 1980), and the implementing regulations at 5 C.F.R. Part 536 (1983), certain Federal employees who have been subject to reductions in grade as a result of grade reclassification actions or reduction-in-force actions, acquire certain entitlements to grade and pay retention. However, a Federal employee who is reduced in grade or pay at his own request acquires no such entitlements. 5 U.S.C. §§ 5362(d)(2) and 5363(c)(3); and 5 C.F.R. § 536.105(a)(3). If Mr. Ragland voluntarily accepted the lower-graded position, he would have no entitlement to grade or pay retention.

The Internal Revenue Service denied Mr. Ragland grade and pay retention, since it viewed Mr. Ragland's reduction-in-grade as having been at his own request. Mr. Ragland--because he views the reassignment to the Houston position as a "sham"--has contended that his acceptance of the lower-graded position was his only option. He has argued that his acceptance of the lower-graded position was not voluntary; therefore, qualifying him for grade and pay retention.

On November 20, 1980, Mr. Ragland filed a claim for salary retention in this matter with our Claims Group. Previously, the Merit Systems Protection Board dismissed an action brought before it in this same matter by Mr. Ragland. William C. Ragland v. Internal Revenue Service, MSPB Decision No. DC075209252 (September 30, 1980). The Merit Systems Protection Board later denied his petition for review of this matter. William C. Ragland v. Internal Revenue Service, MSPB Decision No. DC075209252 (June 11, 1981). Our Claims Group denied Mr. Ragland's claim, by Certificate of Settlement Z-2827974, dated December 15, 1981, because it found that he had been placed in the lower-graded position as a result of his personal request. On January 30, 1982, Mr. Ragland appealed our Claims Group's decision. However, subsequently, we discovered that he had proceeded to active litigation with this same matter before the United States Court of Claims (later the United States Court of Appeals for the Federal Circuit) appealing the earlier Merit Systems Protection Board's decisions dismissing his action.

It is one of our Office's longstanding rules that we will not act on matters which are in the courts during pendency of litigation because the eventual outcome of the litigation may resolve the matter. See Morris Mechanical Enterprises, Inc., B-200552, March 16, 1982. Since

Mr. Ragland had elected to proceed to active litigation in court, we discontinued consideration of his appeal of our Claims Group's certificate of settlement.

Mr. Ragland lost in his litigation of this matter before the United States Court of Appeals for the Federal Circuit. William C. Ragland v. Internal Revenue Service, previously cited. Having lost in one forum, he desires to try another. He requests that his claim before us be renewed, "[s]ince the Merit Systems Protection Board did not rule on the question of salary retention * * *."

The General Accounting Office adheres to the doctrine of res judicata to the effect that the valid judgment of a court on a matter is a bar to a subsequent action on that same matter before the General Accounting Office. 47 Comp. Gen. 573 (1968); Ronald H. Whelan, B-198763, June 25, 1980. We note that regardless of whether the Merit Systems Protection Board ruled on Mr. Ragland's entitlement to salary retention, the United States Court of Appeals for the Federal Circuit did. In this same matter--involving the same events, parties, issue, and argument--the United States Court of Appeals for the Federal Circuit decided that Mr. Ragland "* * * is not entitled to saved grade and pay benefits." William C. Ragland v. Internal Revenue Service, previously cited, at 3.

Therefore, since Mr. Ragland's claim has been considered and dismissed in court, the General Accounting Office will not consider his claim for salary retention.

Milton J. Socolar

for Comptroller General
of the United States