

**DECISION**

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

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**FILE:** B-213594**DATE:** June 28, 1984**MATTER OF:** Robert E. Thompson**DIGEST:**

An employee requested a change to a lower grade from a Motor Vehicle Operator WG-6, step 5, to Firefighter (Structural) GS-4. The local installation set his rate of basic pay at step 8 based upon a local policy applicable to pay entitlement on voluntary demotions involving a change in pay systems. That policy resulted in selection of a rate lower than the maximum rate which could have been allowed under controlling law. The employee alleges that the policy was not consistent with the policy of other installations and seeks to have his pay set at step 10 of grade GS-4. The claim is denied since the pay-setting policy of the local installation was not in conflict with the agency wide regulation, and the employee's pay was set in accordance with the applicable regulation.

An employee who requested a downgrade from a wage grade position to a lower-graded position in the General Schedule challenges the application of the policy by which his pay was set in the General Schedule.<sup>1</sup> Because there was no agency-wide regulation requiring that the employee's pay be set at the maximum level of his new grade which did not exceed his highest previous rate, the agency acted within its discretion in setting the employee's pay at a lower rate.

Mr. Robert E. Thompson was employed by the Defense Logistics Agency as a Motor Vehicle Operator, WG-6, step 5 (\$5.77 per hour), when he was selected for a GS-4

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<sup>1</sup> This claim was forwarded for an advance decision by R. E. Melroy, Chief, Accounting and Finance Division, Office of the Comptroller, Defense General Supply Center, Defense Logistics Agency, Richmond, Virginia.

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Firefighter (Structural) position effective November 14, 1976. His rate of pay within grade GS-4 was set under regulations issued by the Defense General Supply Center, Richmond, Virginia, using the "representative rate" of the positions involved. Under that regulation the rate in the new grade is that rate which has the same relationship to the representative rate of that grade as the prior rate had to the representative rate in the former grade. The representative rate in wage board positions with 5 steps is step 2, and the representative rate in General Schedule positions is step 4. 5 C.F.R. § 532.401, definition of "representative rate." Since Mr. Thompson was receiving 112 percent of the representative rate in WG-6, i.e. 112 percent of WG-6, step 2, his pay was set at the step in GS-4 which exceed 112 percent of step 4 in that grade, i.e. step 8.

Mr. Thompson argues that the rate should have been set at GS-4, step 10, on the basis that his wage grade hourly rate of \$5.77 exceeded all rates in GS-4. Under controlling law and regulations his rate could have been set at step 10 under the "highest previous rate rule" in the absence of an agency regulation or policy which prescribed some other rate or authorizes local officials to exercise discretion in individual cases.

The position of the Center is that Mr. Thompson's pay was correctly set under Center regulations pertaining to employees changing pay systems who are demoted at their own request. Specifically they refer to paragraph 3 of the Defense General Supply Center, Office of Civilian Personnel Bulletin Number 10, May 15, 1975, which provides:

"The salary of employees changing pay systems through demotion, transfer or reinstatement at their own request or with their consent will be set based on the same ratio to the representative rate in the new position as the old salary was to the representative rate in the old position. Salary rates falling between steps will be set at the higher step."

Mr. Thompson does not challenge the actual computation of his salary based on this regulation. Rather, he alleges

that the rate of pay of other Defense Logistics Agency employees at other installations had been set giving them the maximum benefit of the highest previous rate rule. He questions whether it is proper for different installations within an agency to have different policies for setting pay.

When an employee is reemployed, transferred, reassigned, promoted, or demoted, an agency may pay the employee at any rate of the grade which does not exceed his or her highest previous rate. This is the "highest previous rate rule." See 5 C.F.R. § 531.203(c). There are no fixed government-wide rules that govern the setting of an employee's rate of pay on demotion. Rather, an agency has discretion under 5 C.F.R. § 531.203(c) to formulate its own policy, and an employee does not have a right to be paid at the maximum allowable under the highest previous rate rule. Clifton A. Russell, B-186554, December 28, 1976; Charles V. Liebscher, B-194893, May 20, 1980.

The policy in effect at the Center during the period involved here is set forth in its Civilian Personnel Bulletin Number 10, referred to above. Since Mr. Thompson has alleged that other Defense Logistics Agency employees received different treatment, the first issue presented is whether the Center's policy conflicts with the agency-wide policy.

The pertinent Defense Logistics Agency regulations in effect at the time were contained in the Civilian Personnel Directives, chapter 531, subchapter 2, change 14, April 2, 1973. Paragraph 5 provides:

"Pay may be set at any rate above the required minimum which does not exceed an employee's highest previous rate whenever either of the following conditions justifies the payment of the higher rate. If the highest previous rate falls between two scheduled rates of the new grade, pay may be set at the higher rate.

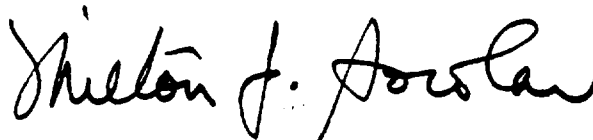
"a. Assessment of the qualifications, proficiency, and service history of an employee in relation to the position in which he is being employed."

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We find nothing in the governing regulations of the Office of Personnel Management that requires an agency to adopt a single policy. Thus, we cannot question the provisions of paragraph 5a of the Defense Logistics Agency regulation which reserves to the local installations the authority to formulate a policy concerning the application of the highest previous rate rule in situations that are not otherwise specifically covered. Under this regulation the rules for setting pay upon an employee's demotion may be different at different installations.

Accordingly, we find the Defense General Supply Center's regulation to be valid and properly issued within the discretion allowed.

Since the local regulation was appropriately implemented, we find no basis upon which to disturb the action of the agency in setting Mr. Thompson's rate of basic pay at step 8 of GS-4.



Acting Comptroller General  
of the United States