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

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February 21, 1986

The Honorable Charles McC. Mathias, Jr.
Chairman, Subcommittee
on Governmental Efficiency and
the District of Columbia
Committee on Governmental Affairs
United States Senate

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Dear Mr. Chairman:

This is in response to your letter of July 25, 1985, requesting our views on whether the Department of Defense's overseas rotation policy for civilian personnel is in violation of any statute. Your request arises from an inquiry you received from [redacted], a civilian employee of the Department of the Army. Based on our review of DOD's policy as implemented by the Department of the Army, we discern no statutory violation.

As explained in [redacted] letter of July 8, 1985, addressed to you, his primary concern is that the Department of the Army is not complying with applicable laws and regulations in determining which civilian employees will have their overseas tours of duty extended. Essentially, he alleges that the current Army policy, as implemented by the Army in C14, AR 690-300, Chapter 301 (Chapter 301), is inconsistent with the purpose behind the enactment of 10 U.S.C. § 1586, the law regarding the rotation of Department of Defense overseas employees between posts of duty within and without the continental United States. He claims that this regulation permits decisions regarding extensions of overseas tours to be made in an arbitrary and capricious manner in violation of Federal merit systems principles and that the Army's current administration of DOD's rotation policy causes unnecessary disruption, resulting in constant turnover and low productivity for overseas employees.

Preliminarily, we note that much of [redacted] discussion is based on Chapter 301 of the Army Regulations, which was extensively revised and reissued effective April 1, 1985. Because many of [redacted] s complaints and comments about the Army regulation are no longer pertinent we will not address each of his concerns but rather will deal with the general question of whether the Army regulation is consistent with law.

[redacted] initially questions whether Chapter 301 is consistent with 10 U.S.C. § 1586 (1982). This law, enacted in 1960, was intended to establish within the military departments an ongoing personnel program designed to facilitate the rotation of civilian employees of the Defense establishment from positions overseas to positions in the United States. See S. Rep. No. 1624, 86th Cong., 2d Sess. 1 (1960) and H.R. Rep. No. 1469, 86th Cong., 2d Sess. 1 (1960). To ensure the success of the rotation program, Congress established return rights for career and career-conditional civilian employees assigned to posts outside the United States. 10 U.S.C. § 1586(c). At a minimum, the employee is guaranteed that upon his return from overseas assignment he will be placed in a position without reduction in the seniority, status and tenure he held prior to accepting the foreign assignment. The Secretary of Defense with respect to civilian employees of the Department of Defense and the Secretaries of each military department are empowered to prescribe regulations necessary to establish the rotation program. 10 U.S.C. § 1586(b).

The Army's policy of rotating employees is contained in Subchapter 5 of Chapter 301 (copy enclosed). Under paragraph 5-4b installation commanders have been delegated authority to approve extensions beyond the initial overseas tour for a period of up to 5 years. Approval must be based on a decision that (a) management has a continuing need for the employee's services, (b) the employee has made a notable contribution to accomplishment of the overseas command mission, and (c) the employee has successfully adapted to the environment in the overseas area. Extensions for up to 5 years may be initiated by management with the consent of the employee. The regulations specify that a commander will not disapprove an extension request instead of taking remedial action to correct conduct or performance problems. Chapter 301, para. 5-4b(3).

Commanders of major Army commands are delegated authority to approve extensions beyond 5 years for employees under their jurisdiction.[1]/ This authority may be redelegated to a

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1/ The 5-year period is significant. When a tour of duty is extended beyond 5 years the employee's reemployment rights will be forfeited unless the former U.S. employer concurs in the extension. Chapter 301, para. 5-5e(1).

subordinate commander as specified in para. 5-5a of Chapter 301. The granting of such an extension is a matter for determination by management, taking into account such factors as whether the extension is cost effective, promotes the continuity of organizational efficiency, or is positively related to some other mission-oriented need. See Chapter 301, para. 5-5b.

Paragraph 5-5(c) spells out the procedures to be followed in granting extensions beyond 5 years. An extension is to be initiated by management with the consent of the employee. To receive an extension, the employee must be rated fully successful or better and be current in the knowledge, skills, and abilities required to perform the duties of the position. Tour extensions are limited to a period not to exceed the renewal agreement tour for the area. However, an unlimited number of extensions may be allowed if approved for up to one renewal agreement period at a time under the applicable guidelines. Chapter 301, para. 5-5d. and f.

We find nothing in the Army regulation that would be inconsistent with the statutory entitlement afforded employees under 10 U.S.C. § 1586, which relates to reemployment rights.[2/] In this regard it is well established that, to sustain administrative regulations and practice, it is not necessary to find that the agency interpretation or construction of the statute is the only reasonable one, or even that it is the construction which a reviewing body would attach to it if it had interpreted it in the first instance. E.g., Udall v. Tallman, 380 U.S. 1 (1965). Rather, the inquiry is limited to whether there exists a reasonable and rational basis for the administrative regulation. See Davis, Administrative Law Treatise, § 5.05 (1958).

We have also examined the Army's policy on granting extensions of overseas tours of duty in light of the Federal merit system principles. These principles, set out in 5 U.S.C. §§ 2301-2305, generally require, among other things, that decisions regarding personnel actions be made objectively, taking into account the adequacy of the employee's

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2/ The Department of the Army has separate regulations specifically relating to reemployment rights under 10 U.S.C. § 1586. See C10, AR 690-300, Chapter 352, Subchapter 85 (15 August 1982).

performance. See 5 U.S.C. § 2301. We see nothing in the Army's regulatory scheme that violates these principles. It must be emphasized that the Army's system as implemented by its regulations is for the benefit of the Army and not for the sole benefit of an employee, who has no absolute right to a tour extension. See Harris v. United States, 640 F.2d 1309, 1313 (Ct. Cl. 1981).3/ The suggestion made by [redacted], to allow rotation only at the employee's election, would appear to have a detrimental effect on DOD's rotation policy.

Accordingly, it is our view that the Army's procedure for deciding whether to extend or renew a tour of duty does not violate any law.

Sincerely yours,

for Milton J. Socolar
Comptroller General
of the United States

Enclosure

3/ As [redacted] points out, an employee may not file a grievance under an agency's administrative grievance system because of a failure to be granted a tour extension or renewal. See 5 C.F.R. § 771.206(c) (XVII) (1985).