

PLM-I Riedinger

**DECISION**



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

**FILE:** B-220701

**DATE:** March 31, 1986

**MATTER OF:** Stanley P. Laber - Within Grade Salary Increase - Highest Previous Rate Rule

**DIGEST:**

An employee (grade GS-9, step 1), an intern in an agency's training program, was authorized to go on leave without pay. While in that status, he was employed by another agency in a higher grade. He voluntarily resigned that position and resumed his training with the first agency. Following training, he was reassigned, but remained in grade GS-9, step 1. He requested a salary adjustment to step 8 of his grade, contending that the agency's regulations mandated that rate of pay by application of the highest previous rate rule. The highest previous rate rule allows agencies discretion to set pay at less than the highest previous rate. Therefore, unless an agency affirmatively relinquishes that discretion in its own regulations, it is not obligated to pay the highest allowable rate. The agency in this case has not relinquished discretion to set pay at less than the highest allowable rate. Therefore, the agency denial of the claim is sustained.

This decision is in response to a request from the Chief, Accounting and Finance Division, Office of the Comptroller, Defense Logistics Agency (DLA). It concerns the entitlement of Mr. Stanley P. Laber to receive backpay under the highest previous rate rule incident to a reassignment and transfer. We conclude that he is not so entitled for the following reasons.

BACKGROUND

Mr. Laber was employed in the DLA Centralized Intern Development Office, Milwaukee, Wisconsin, as a Quality Assurance Specialist (Intern), in grade GS-9, step 1, with job occupation code 1910. On March 6, 1984, he requested

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that he be permitted to go in a leave without pay status (LWOP) from his position. His request was granted effective April 27, 1984.

While in an LWOP status, Mr. Laber accepted a term appointment of more than 90 days with the Department of the Army as an Education Specialist, grade GS-11, step 1, job occupation code 1710. He held that position from April 29, 1984, to August 31, 1984. On that latter date he voluntarily resigned that position, returned to DLA's Centralized Intern Development Office and resumed his position as a Quality Assurance Specialist (Intern), grade GS-9, step 1. On December 2, 1984, having completed the intern program, he was reassigned to the position of Quality Assurance Specialist (Electronic). Since he was reassigned within the agency in the same job occupation code (1910) and without change in grade level, his salary was continued at his existing rate for grade GS-9, step 1.

Following reassignment, Mr. Laber submitted a request for salary adjustment, contending that the agency official who reassigned him was obligated to apply the highest previous rate rule and set his salary at the grade GS-9, step 8 level, at the time of reassignment, because of his employment with the Department of the Army in grade GS-11, step 1. His asserted basis was that paragraph II of DLA Regulation 1416.8 expressed the mandate that the agency is required to apply the highest previous rate rule in his situation. That salary adjustment request was denied by the Director, Office of Civilian Personnel, at the DLA installation where he was employed.

#### DECISION

The authority for use of the highest previous rate rule is contained in 5 U.S.C. § 5334(a) and 5 C.F.R. § 531.203(c). Those regulations provide, generally, that the maximum salary which may be paid an employee upon reemployment, reassignment, promotion, demotion, or change in appointment, may be established at any rate of the employee's grade which does not exceed the employee's highest rate of pay previously received.

The above pay setting rule does not mandate use of the highest previous rate. Each agency may formulate its own policy. It may implement a broad mandatory policy of paying

the highest previous rate, if it chooses, or may limit its application of the highest rate to individuals under specified circumstances. Clifton A. Russell, B-186554, December 28, 1976. However, where an agency has not affirmatively relinquished its discretionary authority through adoption of a mandatory policy, the agency is under no obligation to set an employee's pay at the highest rate of his or her current grade which does not exceed the highest previous rate. See Irene Sengstack, B-212085, December 6, 1983, citing to Richard L. Cepela, B-184280, February 17, 1977.

The particular language Mr. Laber refers to in paragraph II of DLA Regulation 1416.8 is part of a general policy statement. That paragraph provides in part:

"II. POLICY. Rates of pay are set in accordance with governing laws and regulations. \* \* \* an Agency may use a highest previous rate rule in setting rates of pay. The highest previous rate rule will apply in all pay setting actions \* \* \*" (Emphasis supplied.)

While Mr. Laber asserts that the above underscored language establishes the mandate that the highest previous rate must be used in his case, administrative statements suggest a different interpretation. The Acting Chief, Position and Pay Management Division, Office of Civilian Personnel, Headquarters DLA, in a letter dated January 15, 1985, states that within the DLA, that language means that application of the highest previous rate will be considered by the appointing officer in all pay setting actions, except those specified in the policy paragraph. A similar statement of interpretation is contained in DLA Inter-office Memorandum dated September 13, 1985, which states, in part:

"2. It is the policy of this Agency that heads of the DLA primary field level activities (PLFAs), in the exercise of their delegated responsibility to set pay, will consider the use of the highest previous rate rule in all pay setting actions. \* \* \* The intent of this policy statement is to indicate to Commanders that the use of the highest previous rate is not prohibited except in these specific situations and that the maximum use of this pay setting capability is available for their use. \* \* \*"

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In this regard, paragraph IV of DLA Regulation 1416.8 establishes the procedures that heads of DLA primary field level activities are required to follow in determining general schedule employee rates of pay. Paragraph IV-B provides, in part:

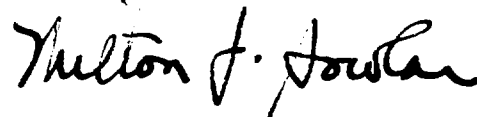
"B. How Rates of Pay are Set

\* \* \* \* \*

"3. \* \* \* Except as provided below, the pay of an employee who is reemployed, transferred, reassigned, promoted, demoted, or whose type of appointment is changed, may be set at any step rate of his grade which does not exceed the highest step rate permitted by the highest previous rate provision \* \* \*."  
(Underscoring supplied.)

The exceptions listed thereafter in paragraph IV-B describe situations for which use of the highest previous rate is either strictly limited, or is deemed inappropriate due to the required use of other pay setting provisions of law.

Accordingly, it is our view that the DLA did not have a mandatory policy requiring the use of the highest previous rate. Therefore, the action taken in Mr. Laber's case, denying his claim, is sustained.



Acting Comptroller General  
of the United States