



The Comptroller General
of the United States

Washington, D.C. 20548

Rudinger, PL4

Decision

Matter of: Barbara J. Cox - Highest Previous Rate Rule -
Reconsideration
File: B-221525
Date: September 28, 1987

DIGEST

Employee accepted a grade GS-4, step 1, position with the Department of the Air Force having previously been employed by the Department of the Navy. She later resigned that position to accept a grade GS-7, step 1, position at the same Air Force activity, without a break in service. She seeks a retroactive salary adjustment and backpay for both positions based on her highest previous rate of pay (grade GS-6, step 8). The Air Force activity has applied the highest previous rate rule to her grade GS-4 position and determined she was retroactively entitled to the pay of step 10 of that grade. With regard to the use of the highest previous rate rule for the grade GS-7 position, we hold that her claim must be denied. The Air Force regulations in effect at the time of the claim, as supplemented by local activity regulations, provide that the rate of pay payable on a position change during a period of continuous service will be at least equal to present rate of pay. Since the rate for grade GS-7, step 1, exceeded the rate for grade GS-4, step 10, her rate of pay in the grade GS-7 position was properly set.

DECISION

This decision is in response to a letter from Mrs. Barbara J. Cox, requesting further consideration of her claim for backpay under the highest previous rate rule incident to her employment at MacDill Air Force Base, effective February 21, 1982. We conclude she is not so entitled for the following reason.

BACKGROUND

Mrs. Cox's initial claim with our Office was for increased pay while temporarily employed by the Veterans

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Administration (VA) in grade GS-3, step 1, during the period June 14 through December 6, 1981. She contended that based on the highest previous rate rule she was entitled to the pay of a higher step of that grade because of the pay she previously received in grade GS-6, step 8, while employed by the Naval Air Station, Jacksonville, Florida.

By decision Barbara J. Cox, 65 Comp. Gen. 517 (1986), we found that VA regulations provided that when an employee's previous rate of pay was earned in a non-VA agency, use of the highest previous rate rule is discretionary. Therefore, since the agency exercised their discretion by declining her request, we concluded she was not entitled to a retroactive pay adjustment and backpay.

Mrs. Cox's present request for further consideration involves her appointment to a permanent position at MacDill Air Force Base in grade GS-7, step 1, effective February 21, 1982. It is her view that Air Force regulations state a nondiscretionary policy requiring use of the highest previous rate rule. As a result, she claims entitlement to the pay of a higher step of grade GS-7, because of the previous rate of pay earned in her last permanent position (grade GS-6, step 8).

Mrs. Cox was employed as an Accounting Technician, grade GS-7, step 6 (\$15,184), at the National Security Agency when, on February 17, 1979, she transferred to a similar position at the Naval Air Station, Jacksonville, Florida. Both appointments were permanent positions, but the transfer involved a downgrade to grade GS-5, step 10. Mrs. Cox was subsequently promoted to grade GS-6, and, when she left that position on June 13, 1981, she was receiving the pay of step 8 of that grade (\$16,864).

On the following day, June 14, 1981, Mrs. Cox was appointed to a temporary position as a Clerk-Typist, grade GS-3, step 1, by the VA in St. Petersburg, Florida, and on December 6, 1981, she transferred to another temporary position as an Accounting Technician, grade GS-4, step 1, at MacDill Air Force Base, Florida. Finally, Mrs. Cox was

appointed to a permanent position at MacDill on February 21, 1982, as a Budget and Accounting Technician, grade GS-7, step 1.

Pursuant to her claim under the highest previous rate rule and in recognition of the applicability of that rule, the Air Force determined that, at the time she was appointed to her grade GS-4 position, she was entitled to receive the pay of step 10, rather than the pay of step 1, for the entire period she occupied that position. Mrs. Cox was not completely satisfied with that settlement and now contends that use of the highest previous rate based on her last permanent grade should also apply to her permanent appointment as a grade GS-7, effective February 21, 1982.

RULING

Section 5334(a) of title 5, United States Code (1982), and 5 C.F.R. § 531.203(c) and (d) (1982), provide that an employee who is reemployed, reassigned, promoted, or demoted, or whose type of appointment is changed may be paid at the highest rate of the grade held which does not exceed the employee's highest previously earned rate of pay.

Our decisions have consistently held that it is within the agency's discretion to fix the initial salary rate of an employee at the minimum salary of the grade to which appointed and that an employee has no vested right upon transfer or reemployment to receive the highest salary rate previously paid. See 31 Comp. Gen. 15 (1951); Barbara S. McCoy, B-196686, January 17, 1980. Each agency may formulate its own policy regarding application of the highest previous rate rule, and such policy may allow for mandatory or discretionary application of the employee's highest previous rate. Carma A. Thomas, B-212833, June 4, 1984.

The Air Force Regulations governing pay rate setting for civilian personnel during the period of this claim are those contained in Air Force Regulation (AFR) 40-530, May 17, 1971, as supplemented by MacDill (MACD) Supplement 1, July 6, 1977. Paragraphs 3b and c of AFR 40-530 provide in part:

"b. Position Changes, Reemployment, and Appointment Changes. * * * [T]he pay of an employee who is reemployed, transferred * * * is set at any step rate of his grade which does not exceed the highest step rate permitted by the highest previous rate rule * * *.

"(c)(1) Position Changes. * * * [T]he pay of an employee who is changed or transferred to another position during a period of continuous service within the Department of Defense is set at a rate at least equal to his existing rate. * * *"

Additionally, paragraph 3c of the MACD Supplement to this regulation provides in part:

"(f) The pay of an employee placed as a result of selection through the Centralized Referral System without a break in service will be set at a step rate at least equal to the current rate at the time of the position change."

As we read paragraph 3b of the AFR, the Air Force established the policy that an employee such as Mrs. Cox would be eligible to receive a rate of pay in the grade to which appointed at the highest step of that grade which does not exceed the highest rate of pay previously earned. At the time Mrs. Cox was initially employed at MacDill Air Force Base, her highest rate of pay previously earned was as a grade GS-6, step 8 (\$16,864). By retroactively establishing her pay at step 10 of grade GS-4 (\$14,937), effective December 6, 1981, through use of the highest previous rate rule, the Department of the Air Force satisfied its own pay-setting regulations.

As to the period beginning February 21, 1982, when Mrs. Cox resigned that grade GS-4 temporary position and was appointed to a grade GS-7 permanent position without a break in service, further use of the highest previous rate rule was inappropriate. The applicable provisions governing her February 21, 1982, promotion are those in paragraph 3c of

the MACD Supplement to AF Regulation 40-530 previously quoted, which simply require that the rate of pay payable on a position change during a period of continuous service will be at least equal to the employee's present rate at the time of change. In view of the fact that the pay rate for grade GS-7, step 1, is more than the pay rate of a grade GS-4, step 10, that regulatory requirement also has been satisfied. Although Mrs. Cox refers to more recent Air Force regulations and local policies to support her claim, we must decide her claim based on the regulations and local policies in effect at the time of her appointment.

Accordingly, we conclude that Mrs. Cox is not entitled to the pay of additional steps in her grade GS-7 position effective February 21, 1982. However, the action taken by her agency to pay her at the step 10 rate of grade GS-4 rather than step 1 of that grade during the period December 6, 1981, through February 20, 1982, is proper.

for *Serry R. Van Cleave*
Comptroller General
of the United States