



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Robert G. Joyce - Severance Pay - Involuntary  
Separation  
File: B-223184

Date: December 19, 1986

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### DIGEST

Upon voluntary separation from a permanent GS-13, step 4, position, employee was appointed without break in service to a GM-14 full-time temporary position with another agency. Record shows his separation after temporary appointment was involuntary, and he is therefore entitled to severance pay. Once eligibility to receive severance pay has been found, the amount due must be computed in accordance with the formula prescribed at 5 U.S.C. § 5595(c) and 5 C.F.R. § 550.704. This formula provides that while the employee's entitlement is determined upon the termination of the temporary position, the amount of the severance pay fund is computed based on employee's basic rate at the time of the separation from the permanent position, in this case GS-13, step 4.

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### DECISION

This decision is in response to a letter from Gail L. Lively, Acting Deputy Director, Personnel and Training, for the U.S. Department of Housing and Urban Development (HUD), requesting an advance decision on behalf of Mr. Robert G. Joyce, a former employee of HUD, regarding his severance pay entitlement and the rate to be used to compute severance pay. We conclude that once eligibility to receive severance pay has been found, as it has in this case, the amount of severance pay due must be computed in accordance with the formula prescribed at 5 U.S.C. § 5595(c) and 5 C.F.R. § 550.704(b)(4)(ii), which requires that Mr. Joyce's severance pay fund must be computed based upon the rate in effect at the time of his separation from his last permanent appointment.

### BACKGROUND

While employed by the Office of Personnel Management (OPM), Mr. Joyce was downgraded from GS-13, step 4, to GS-7 because of a reduction-in-force. Without a break in service,

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he voluntarily terminated his permanent appointment with OPM to accept a temporary appointment as a GM-14 with HUD. Subsequently, he was involuntarily separated from his temporary appointment.

The certifying officer reports that HUD determined that Mr. Joyce was entitled to severance pay based upon the \$47,392 rate for GM-14 in effect at the time Mr. Joyce was involuntarily separated from that agency's temporary appointment on February 28, 1986. However, OPM advised HUD later that, although Mr. Joyce was entitled to severance pay as a result of his separation on February 28, 1986, the severance pay fund must be based upon the \$38,422 rate for GS-13, step 4, in effect at the time Mr. Joyce separated from his last permanent appointment with OPM. This is the position from which Mr. Joyce was separated on April 16, 1983, when he accepted the temporary appointment with HUD.

#### CERTIFYING OFFICER'S CONTENTION

The certifying officer contends that Mr. Joyce's severance pay fund should be computed based upon the \$47,392 rate in effect immediately prior to his involuntary separation from his temporary appointment with HUD on February 28, 1986. In support of her contention, the certifying officer reasons that according to 5 U.S.C. § 5595(b)(1), the separation which establishes severance pay entitlement must be an involuntary action. Of the two above separations, only the second one, the separation from the temporary appointment, was an involuntary action. Also, 5 U.S.C. § 5595(c)(1), which provides a formula for computing severance pay, states that the fund must be computed based upon "the rate received immediately before separation." Thus, the certifying officer concludes, if the action that entitled Mr. Joyce to severance pay was his involuntary separation from his temporary appointment, then his fund should be computed based upon the higher rate of \$47,392. That rate was in effect at the time of his involuntary separation from his temporary appointment and was the rate he received immediately before his final separation.

#### ANALYSIS AND CONCLUSION

Mr. Joyce's entitlement to severance pay arises under 5 U.S.C. § 5594(a)(2)(ii) (1982). This provision generally excludes temporary employees from severance pay eligibility but makes an exception for temporary employees "so appointed for full-time employment without a break in service of

more than 3 days following service under an appointment without time limitation \* \* \*." See, in this regard, Sullivan v. United States, 4 Cl. Ct. 70 (1983), aff'd, 742 F.2d 628 (Fed. Cir. 1984); Franklin L. Musser, B-213346, March 3, 1986.

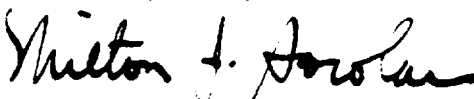
The OPM has issued regulations governing the receipt of severance pay under its statutory authority to specifically prescribe such regulations, 5 U.S.C. § 5595(b) (1982), and has defined the rate received immediately before separation for employees who receive severance pay under 5 U.S.C. § 5595(a)(2)(ii). Thus, 5 C.F.R. § 550.704(b)(4)(ii) (1986) provides as follows:

"If an employee retains entitlement to severance pay under section 5595(a)(2)(ii) of that title, 'basic pay at the rate received immediately before separation' under section 5595(c) of that title is that basic rate received immediately before the termination of the appointment without time limitation."

We find that this regulatory provision represents a valid -- exercise of administrative discretion by the agency designated to provide for payment of severance pay. The regulation is facially clear and controls Mr. Joyce's severance pay computation entitlement.

The rationale behind applying the rate received immediately before the termination of the appointment without time limitation is simple and fair. The application permits an employee under notice of involuntary separation to accept a lower-paid temporary appointment, if available, with the assurance that it will not reduce the amount of severance pay upon separation from the service at the termination of the temporary appointment. B-162646, December 6, 1969. It is unfortunate that Mr. Joyce's situation is opposite to this since he accepted a temporary appointment at a higher grade than the retained grade he held under his permanent appointment. However, he would have been entitled to such protection had the circumstances been reversed.

Accordingly, Mr. Joyce's severance pay should be computed using his basic pay at the time of his separation from OPM, that is, \$38,422.

*for*   
Comptroller General  
of the United States