



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Robert S. McCandliss - Unhealthful Foreign Post -
Retroactive Designation

File: B-228650

Date: October 26, 1988

DIGEST

If adequate documentation is provided, the Secretary of State may retroactively designate Juba, Sudan, as an unhealthful post in order to allow an employee to receive extra service credit for retirement purposes since the post was not considered previously for such designation due to administrative error.

DECISION

The issue in this case is whether the Secretary of State may retroactively exercise his discretion to designate Juba, Sudan, as an unhealthful post in order to allow an employee of the Agency for International Development (AID) to receive extra service credit for retirement purposes. For the reasons stated below we hold that the designation may be made retroactively if AID provides documentation adequate for the Secretary to determine that the post was in fact unhealthful during the period in question.

Mr. Robert S. McCandliss, an employee with AID, arrived in Juba, Sudan, in 1979 and began to receive the post differential payment designated for Juba at Section 920 of the Department of State Standardized Regulations (Government Civilians, Foreign Areas) (SR). Post differential payments are authorized under 5 U.S.C. § 5925 for employees at posts with environmental conditions "which differ substantially from conditions of environment in the continental United States and warrant additional pay as a recruitment and retention incentive."

Two months after his arrival in Juba, Mr. McCandliss executed a form by which he elected to receive extra service credit for retirement purposes in lieu of the post differential. Such credit is authorized by 22 U.S.C. § 4057 when an employee serves at a post designated as unhealthful

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by the Secretary of State. Although Juba does not appear on the list of unhealthful posts found at Exhibit 671.5-14a of Volume 3 of the Foreign Affairs Manual (FAM), and even though the form clearly states that an election is available only if the post is so classified, AID accepted the completed form and discontinued payment of the post differential to Mr. McCandliss. Mr. McCandliss took no further action, assuming he would receive service credit for his tour of duty in Juba upon his retirement.

When Mr. McCandliss applied for retirement he was informed that he could not receive credit for his tour at Juba since it was not specifically designated as an unhealthy post. When this matter was brought to its attention, the Allowances Staff at the Department of State expressed doubt that it could retroactively designate Juba as unhealthy and, in any event, had never received from AID the forms upon which it normally bases the unhealthy determination. The Allowances Staff suggested that Mr. McCandliss seek payment of the post differential for the period he served in Juba, but he stated a preference for the service credit. In fact, it appears that his claim for the post differential would be substantially or completely barred by operation of the Barring Act, 31 U.S.C. § 3702(b), which provides that claims against the United States cognizable by the Comptroller General must be received within 6 years of the date they accrued in order to be considered for payment. As a result, Mr. McCandliss cannot be made whole unless Juba is retroactively designated as an unhealthy post.

Our general rule is that a personnel action may not be retroactively effective so as to increase the rights of an employee to compensation in the absence of a statute so providing. 26 Comp. Gen. 706 (1947); 39 Comp. Gen. 583 (1960) and 40 Comp. Gen. 207 (1960). However, we have permitted retroactive adjustments where an administrative error has deprived the employee of a right granted by statute or regulations. See 21 Comp. Gen. 369 (1941); 37 Comp. Gen. 300 (1957) and 37 Comp. Gen. 774 (1958). We have also permitted retroactive adjustment of salary rates where administrative errors occur as a result of failures to carry out nondiscretionary administrative regulations or policies. See 34 Comp. Gen. 380 (1955); 39 Comp. Gen. 550 (1960) and 54 Comp. Gen. 263 (1974).

Under the applicable statutory and regulatory authorities Mr. McCandliss was entitled to receive either post differential or extra service credit for his duty at Juba. The AID erred when it terminated his post differential without determining whether Juba was on the list of unhealthy posts.

The situation in this case is similar to those cases where we have allowed retroactive payment of hazardous duty differential to employees who were engaged in the hazardous duty prior to the finding that they were covered by the differential. See Ronald V. Bell, et al., B-221749, July 28, 1986; and B-180206, July 16, 1974. When the work was properly classified, the employees were granted retroactive payments based on either records submitted of their actual work time or estimates based on subsequent duty.

If AID is able to provide documentation sufficient to enable the Secretary of State to make a determination that the conditions at Juba were unhealthful during Mr. McCandliss's tour of duty, we would have no objection to a retroactive designation of Juba as an unhealthful post so that Mr. McCandliss may be granted extra service credit for the period in question.

Milton J. Roemer
for Comptroller General
of the United States