



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Jean M. Drummond - Highest Previous Pay Rate

File: B-229165

Date: August 8, 1988

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### DIGEST

A former United States Small Business Administration employee seeks a retroactive salary adjustment to her highest previous rate of pay. Whether to authorize a salary adjustment based on highest previous rate is discretionary with the agency. The employee is not entitled to the salary adjustment, in the absence of a showing that the agency abused its discretion in not authorizing the salary adjustment.

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### DECISION

Ms. Jean Drummond sought a retroactive salary adjustment from her former employer, the United States Small Business Administration (SBA). Because she had served in various government positions at pay grades higher than her grade at the SBA, she contends that she was entitled to the benefit of the highest rate of pay rule established under 5 U.S.C. § 5334(a) (1982) and 5 C.F.R. § 531.203(c) and (d) (1981). The SBA declined to make the adjustment, and our Claims Group denied her claim.<sup>1/</sup> On appeal we affirm our Claims Group's settlement.

#### Facts

The SBA employed Ms. Drummond as a GS-03, step 1, clerk-typist from November 1983 to February 1984 in the SBA's disaster assistance program. Ms. Drummond previously had been a GS-07 with the United States Postal Service and a GS-05 with the United States Air Force. Ms. Drummond contends that the SBA offered her a position as a GS-05, but withdrew the offer in the mistaken belief that her time in that grade had not been "consistent" or "not in sequence."

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<sup>1/</sup> Claims Group Settlement number Z-2864407-089, May 1, 1987.

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The Claims Group found that the SBA acted within its discretionary authority in placing Ms. Drummond in a GS-03, step 1, position.

#### Discussion

Under the provisions of 5 U.S.C. § 5334(a) (1982) and 5 C.F.R. § 531.203(c) and (d) (1981), reemployed personnel may be paid at the highest rate of the grade that does not exceed the employee's highest previous pay rate. We consistently have held that these provisions give each agency the discretion to formulate its own policy regarding the application of the rule. Doris M. Arehart-Zuidema, B-223356, Aug. 21, 1987. Furthermore, a retroactive adjustment of the salary rate will not be made unless there has been an administrative error, defined as an agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." Barbara J. Cox, B-221525, Apr. 23, 1986; Barbara S. McCoy, B-196686, Jan. 17, 1980; and 31 Comp. Gen. 15 (1951).

We cannot determine from the record if and on what basis the SBA determined that Ms. Drummond's time as a GS-05 had not been "consistent" or "not in sequence." The agency official reporting on the matter indicates that he has no idea what Ms. Drummond means by that. In any event the record also fails to show that the SBA's determination was contrary to its policy on the subject. The SBA states that its policy contained in the SBA's Standard Operating Procedures Manual, section 35-30, limits the application of the highest rate rule in SBA to situations where the former experience is "directly related" to the new position. The agency also states "Although it is not unheard of, it is extremely rare for us to grant highest previous rate."

The record implies that the SBA reviewed her employment history and determined that the skills involved in her former positions were not directly related to the skills required of a clerk-typist in SBA's disaster assistance program. From these facts, we cannot conclude that the agency abused its discretion by hiring Ms. Drummond at GS-03, step 1. Therefore, we sustain the Claims Group's denial of Ms. Drummond's claim for a retroactive pay adjustment.

*for*   
Comptroller General  
of the United States