



Comptroller General
of the United States

Washington, D.C. 20548

147012

Decision

Matter of: Colonel Amilcar Vazquez, USMC (Retired)

File: B-244417

Date: July 1, 1992

DIGEST

1. A retired member who was employed by the Census Bureau in a temporary position and, after resignation from that position, was appointed to another temporary position with recognizably different duties and responsibilities from the original position is entitled to the 30-day exemption from dual compensation restrictions under 5 U.S.C. § 5532 (d) (2).
2. A retired member who held a temporary appointment with the Census Bureau before the effective date of Public Law 101-86, which provided for a 6-month exemption from the Dual Compensation Act for members appointed to temporary positions with the Bureau on or after the effective date of the law, does not qualify for the 6-month exemption.

DECISION

This is in response to a request from the United States Marine Corps regarding Colonel Amilcar Vazquez, USMC (Retired).¹ The question presented is whether Colonel Vazquez, who was employed on a temporary basis by the United States Census Bureau from 1989-1991, was entitled to an exemption from the dual compensation laws under either 5 U.S.C. § 5532(d) (2) or Public Law 101-86, following his appointment to the second of two temporary positions with that agency. We conclude that the member was entitled to the exemption provided under 5 U.S.C. § 5532(d) (2), but not to the exemption provided under Public Law 101-86.

Colonel Vazquez started working for the Census Bureau on May 2, 1989 in a temporary position in the area of marketing. He resigned effective February 16, 1990, and was appointed 4 days later to a second temporary position on February 20, 1990. The second appointment required expertise and work in the area of program management.

¹The request was forwarded through the Defense Finance and Accounting Service and has been assigned number 91-2-M.

The Census Bureau treated Colonel Vazquez' second appointment as a continuation of his first appointment. As a result the Marine Corps continued to make deductions from his retired pay for dual compensation. After Colonel Vazquez objected, the Marine Corps submitted the matter to our Office. In its report, the Marine Corps questions whether it should have made any deductions for the period from the Colonel's second appointment.

As indicated above, there were two exemptions from the application of the dual compensation laws that applied to military retirees who accepted temporary positions with the Census Bureau during 1990. The first is set forth in 5 U.S.C. § 5532(d)(2), and it provides a 30-day exemption from dual compensation restrictions for a military retiree who receives a temporary appointment during a fiscal year. In discussing whether Colonel Vazquez qualifies for this exemption, the Marine Corps notes that the duties performed by him during his second appointment were different from those performed during his original appointment, although he received the same salary from the same appropriation source. The Marine Corps asks whether the second appointment meets the test of a new appointment as defined in 5 Comp. Gen. 1305 (1976), so that Colonel Vazquez should have received the 30-day exemption, or whether the second appointment was merely a continuation of the original appointment.

In the 1976 case, we considered the case of a retired military officer who had accepted a temporary position with the Air Force as a consultant. When he received a second appointment in the next fiscal year, the question arose whether he should have received another 30-day exemption under section 5532. We held that he was not entitled to the exemption since the second appointment involved no change in duties, but was an extension of the original appointment. In so holding, we relied on the Federal Personnel Manual. (See FPM Chapter 304, 1-3, January 22, 1982.) The FPM rules for reappointment of consultants state in pertinent part:

" . . . a different position is one with duties and responsibilities that are recognizably different from those of the previous assignment and that cannot be considered an outgrowth or extension of that assignment. Here are some obvious indicators of a different position. Different agency; different organization location within an agency; different area of work; or work on an unrelated program . . ." (Emphasis added.)

In the present case, while there was no change in Colonel Vazquez' salary or in the source of funding for his salary, each position to which he was appointed required different types of tasks and knowledge in different subject areas. We agree with the Marine Corps that the second appointment meets the definition of a new position as articulated in our 1976 case. Accordingly, we conclude that Colonel Vazquez should have received the 30-day exemption provided by section 5532 for his second appointment.

The other exemption is contained in Public Law 101-86, which suspended for 6 months the dual compensation laws for retired regular officers appointed to temporary positions with the Census Bureau starting on or after August 16, 1989. The purpose of this special exemption was to provide a means of enlarging the pool of potential applicants for temporary positions to work on the 1990 census. We have held that this exemption does not apply to military retirees who were working at the Bureau before August 16, 1989, although they accepted appointments after that date. Major John E. Harris, USMC (Retired), B-243864.2, May 26, 1992. There, as here, a 4 day lapse occurred between the original and subsequent appointment, but that fact did not alter our conclusion.

Accordingly, since Colonel Vazquez initial appointment was on May 2, 1989, which is before August 16, 1989, the effective date of Public Law 101-86, he does not qualify for the exemption provided by this law.

for Seymour E. Hinchman
James F. Hinchman
General Counsel