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10/28/93



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Robert A. Hutson - Merit Pay Increase

**File:** B-246499

**Date:** June 12, 1992

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### DIGEST

Within 90 days of the effective date of a merit increase under the Performance Management and Recognition System (PMRS) an employee in a temporary PMRS position was returned on one day to a non-PMRS pay position so that on the next day he could be placed in a permanent PMRS position. The return to the non-PMRS position was administratively necessary only to effect a change in the employee's status from temporary to permanent; he, in effect, served continuously in PMRS positions and did not have a change in pay during the 90-day period before the merit increase. Therefore, he may receive the merit increase to which he otherwise would be entitled.

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### DECISION

Mr. Robert A. Hutson, an employee of the Federal Aviation Administration (FAA), appeals our Claims Group's settlement<sup>1</sup> denying his claim for a \$1,678 merit pay increase under the Performance Management and Recognition System (PMRS). The FAA had found, and our Claims Group agreed, that Mr. Hutson was ineligible for a merit increase because of a regulation issued by the Office of Personnel Management (OPM) barring increases for employees who are promoted into the PMRS within 90 days of the effective date of a merit increase. For the reasons stated below, we reverse the settlement and approve payment of the merit increase.

### BACKGROUND

On June 3, 1990, the FAA temporarily promoted Mr. Hutson from a non-PMRS grade GS-13 staff Air Traffic Control Specialist position to a grade GM-14, PMRS Area Supervisor in Milwaukee. The temporary promotion was to expire

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<sup>1</sup>Z-2866999-347, Sept. 23, 1991.

September 30, 1990. In August 1990, the FAA selected Mr. Hutson for a permanent PMRS Area Supervisor position at the same grade level in another area, effective September 8, 1990. To accomplish this personnel action, the agency prepared two Standard Form (SF) 50s (Notification of Personnel Action). The first ended Mr. Hutson's temporary appointment and restored him to his previous non-PMRS status as a grade GS-13 effective September 8, and the second promoted him from that position to the new PMRS Area Supervisor position, effective September 9.

According to the FAA, when the agency appoints an employee serving under a temporary promotion to a permanent position at the same grade level, the personnel action is processed as "promotion permanent", without a "Change to Lower Grade". However, as a matter of administrative practice, this is only possible when both the temporary and permanent promotions are to the same position. In situations such as Mr. Hutson's, where the agency permanently appoints a person to a position other than the one in which he was serving under the temporary appointment, it is the agency's practice to end the temporary appointment by way of an SF-50, and then to promote the employee using a new SF-50.

The agency indicates that, because Mr. Hutson was returned to the GS-13 non-PMRS position before being appointed to the GM-14 permanent PMRS position, it appears that he was promoted to the PMRS within 90 days of the effective date of the merit increase, and thus he was ineligible for the increase. The agency further indicates, however, that it is inequitable to deny Mr. Hutson the benefit of the merit increase merely because of the administrative processing requirement, and notes that although he was technically promoted to the area supervisor position on September 9, he realized no monetary benefit on that date. In fact he had received no increase or decrease in pay since June 3, the date of his initial temporary promotion to a PMRS position. However, in strict compliance with the language of 5 C.F.R. § 540.107(e), the agency denied the increase, but stated it would welcome a ruling to the contrary.<sup>2</sup>

#### ANALYSIS

The PMRS is a statutorily-authorized separate pay system for certain federal supervisors and managers. 5 U.S.C. § 5401 et seq. (1988). Under regulations prescribed by OPM, based on their performance ratings, employees who serve in PMRS positions are eligible for merit pay increases that are effective the first pay period of each fiscal year.

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<sup>2</sup>Mr. Hutson otherwise qualified for a merit increase by receiving a rating of "exceptional" for the rating period.

5 U.S.C. § 5404(b), and 4 C.F.R. § 540.107(a)(1). Employees are eligible for a merit increase if they are in a PMRS position on the date of the increase and meet other prescribed requirements. 5 C.F.R. § 540.107(a)(2). In 1990 this date was October 7.

The provision of the regulation under which the agency felt constrained to deny Mr. Hutson's merit increase, 5 C.F.R. § 540.170(e), provides as follows:

"(e) An employee who moves in to the PMRS within 90 days of the effective date of the merit increase and who receives an increase to base pay promotion, within-grade increase, quality step increase) within 90 days of the effective date of the merit increase, will not receive a merit increase for that fiscal year. Movements into the PMRS and increases occurring on the effective date of the merit increase are considered to be within this 90-day period. Actions covered by this rule include:

"(1) Conversion to the PMRS;

"(2) Reassignment to the PMRS from another Federal pay system;

"(3) Promotion to the PMRS;

"(4) Temporary promotion to the PMRS." (Emphasis added.)

Under this regulation it appears the employee is excluded from receiving the merit increase if he both moves into the PMRS (receives a promotion to the PMRS) and receives a base pay increase within 90 days of the effective date of the merit increase. As explained to us informally by an official with the Office of Personnel Management's Performance Management Division, which administers the PMRS, the purpose of this 90-day rule is to allow sufficient time for a new PMRS employee to be evaluated in the PMRS position and to prevent windfalls to newly promoted employees. In this case, the agency's normal rating period is from July 1 to June 30. However, the agency extended Mr. Hutson's rating period to August 31 so that his superiors would be able to evaluate him based on his performance as a manager. See in this regard, 5 C.F.R. § 540.104(b)(2). Thus, the agency apparently had a sufficient period to rate him under the PMRS system.

In this case Mr. Hutson initially moved into the PMRS on June 3, 1990, when he was given a temporary promotion to a GM-14 PMRS position with a pay raise. That promotion and

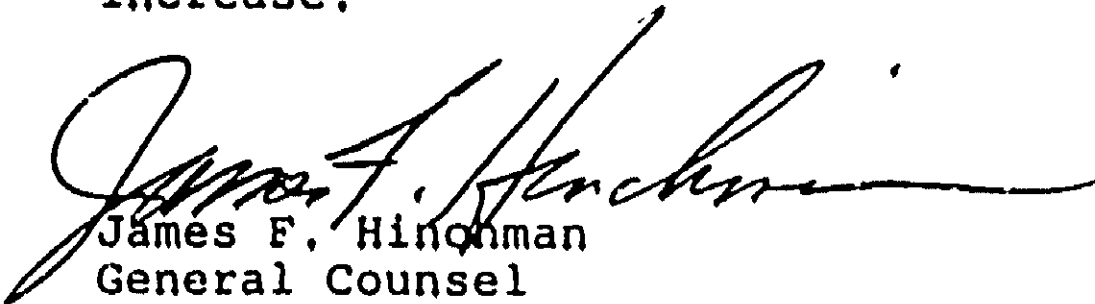
agency apparently had a sufficient period to rate him under the PMRS system.

In this case Mr. Hutson initially moved into the PMRS on June 3, 1990, when he was given a temporary promotion to a GM-14 PMRS position with a pay raise. That promotion and pay raise were both more than 90 days prior to the effective date of the October 7, 1990 PMRS merit increase. His permanent promotion to the GM-14 PMRS position on September 9, 1990, was less than 90 days from the October 7 effective date of the PMRS merit increase. However, as explained above, that was in effect a transfer from the temporary PMRS position with no change in pay. Thus, Mr. Hutson was in the PMRS in temporary and permanent positions from June 3 through October 7 at the GM-14 pay level. Since an employee in a temporary PMRS position is eligible for a merit increase, it is our view that the employee's move in this manner from a temporary PMRS position directly to a permanent PMRS position would not exclude the employee from receiving a merit increase.

In this regard, Mr. Hutson's case is distinguishable from a somewhat similar case in which we disallowed the employee's claim for a merit pay increase. Marq. C. Nelson, B-234392.2, Sept. 11, 1990. In the Nelson case, on March 27, 1988, seven months before the effective date of the merit increase, the employee received a temporary promotion from a non-PMRS grade GS-12 position to a grade GM-13 position in the PMRS. The temporary promotion expired on July 24, 1988, and the employee reverted to her non-PMRS position for a week before receiving a permanent promotion on July 31, 1988, to the same PMRS position in which she had been serving under the temporary appointment. However, unlike Mr. Hutson, her temporary promotion expired and she actually reverted for that interim week to a GS-12 position.

In Mr. Hutson's case, since his June 3 initial appointment to an Area Supervisor's position, Mr. Hutson has served continuously as an Area Supervisor in PMRS positions. In practical terms, Mr. Hutson's September 8 change-in-grade was incidental to a change from a temporary position in one area to a permanent position another area, but in both positions his duties and responsibilities were those of GM-14 Area Supervisor. Therefore, we do not believe Mr. Hutson's change from a temporary PMRS position in one area to a permanent PMRS position in another area at the same grade level disqualifies him for a merit increase.

Accordingly, we approve payment of Mr. Hutson's merit pay increase.



James F. Hinchman  
General Counsel