



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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JAN 28 1976

JAN 2 1976

B-178551

The Honorable John L. McLucas
Secretary of the Air Force
Department of Defense
The Pentagon

Dear Mr. Secretary:

As a result of a congressional inquiry concerning the August 21, 1974 reinstatement of Mr. Sammy H. Marr (SSN 561-36-3427), a civilian Department of the Air Force employee stationed at Holloman Air Force Base, New Mexico, we conducted a review of the manner in which Mr. Marr's case was administratively processed subsequent to a judgment rendered by the District Court for the Western District of Oklahoma. Marr v. Lyons, et al., Case No. 72-288, Civil, U. S. District Court for the Western District of Oklahoma, opinion rendered January 18, 1974. As indicated below, this review disclosed several questionable techniques with respect to the processing of final judgment against the United States. We believe this matter deserves your attention and request your comments thereon.

By way of background, Mr. Marr was a Department of the Air Force civil service employee stationed at Holloman Air Force Base, New Mexico, when he was ordered terminated from his position on September 28, 1970. The termination was effected by the Civil Service Commission based on the provisions of a regulation requiring competitive civil service employees to be citizens of the United States. Mr. Marr, at that time, was not a citizen. Mr. Marr filed an action in the District Court for the Western District of Oklahoma seeking review of the agency action. On January 18, 1974, judgment was entered ordering Mr. Marr's retroactive reinstatement and the award of all backpay and allowances otherwise due. On August 14, 1974, Mr. Marr was retroactively reinstated and on December 27, 1974, the Finance Center at Holloman Air Force Base, under the authority of a telegram originating at Kirtland Air Force Base, New Mexico, computed Mr. Marr's entitlement to backpay as totaling the gross sum of \$68,834.24. After deductions for state and Federal taxes and retirement, Mr. Marr was paid \$54,318.99. Since the judgment of the District Court was not forwarded to this Office for settlement, we have neither certified the judgment for payment nor computed Mr. Marr's entitlement.

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By title 28, U. S. C., section 2414 (1970), Congress has provided that payments of final judgments rendered by a District Court shall be made on Settlements by the General Accounting Office. Additionally, 31 U. S. C. § 724a (1970), provides that there are appropriated out of any money in the treasury not otherwise appropriated, such sums as may be necessary for payment of final judgments, as certified by the Comptroller General.

In the present case, however, it appears that a final judgment has been paid without prior settlement by this Office. Since this Office did not certify the judgment for payment, payment therefor was necessarily effected by a charge to funds other than those referred to in 31 U. S. C. § 724a.

Moreover, judgments which, as here, direct an award of backpay are governed by the provisions of 5 U. S. C. § 5596 (1970), which prescribes allowable payments when an employee undergoes an unwarranted personnel action. By subsection (b)(1) of section 5596, backpay otherwise due is to be decreased by any amounts earned by the employee through other employment during the period covered by the unwarranted personnel action. Although Mr. Marr states that he purchased a home incident to "seeking new employment," we have been unable to determine from the information in our files whether periods of outside employment were considered in computing Mr. Marr's entitlement to backpay.

In view of the foregoing, it is requested that your office prepare an administrative report respecting the above matters. This report should contain a copy of the work papers showing how the backpay was computed and whether Mr. Marr, during his period of separation, had any outside earnings and, if so, were the outside earnings taken into consideration in computing his backpay. This report, together with any other comments you may care to offer, will enable this Office to properly credit the charged appropriation. We have enclosed pertinent background materials to facilitate your reply.

In view of the congressional interest in this case, it is requested that the report be expedited.

Sincerely yours,

Paul G. Demblin

Acting

Comptroller General
of the United States

Enclosures



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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JAN 2 1975

JAN 2 1975

The Honorable Manuel Lujan, Jr.
Member, United States House
of Representatives
Longworth House Office Building
Room 1323

Dear Mr. Lujan:

Reference is made to your letter of October 20, 1975, on behalf of Mr. Sammy H. Marr, in which you forwarded, for investigation and reply, Mr. Marr's letter to you of October 13, 1975, requesting reconsideration of a settlement certificate issued on August 28, 1975, by the Claims Division of this Office.

Since Mr. Marr, by letter of June 6, 1975, had advised this Office that a lawsuit respecting his retroactive reinstatement and entitlement to backpay was still in litigation, the Claims Division, in a settlement certificate dated August 28, 1975, disallowed his claim for attorney's fees and court costs, but declined, in view of the pending litigation, to act on his claim for backpay, severance pay, and various other allowances.

Our investigation of the matter revealed that Mr. Marr was the prevailing party in the litigation he initiated in the District Court for the Western District of Oklahoma. Marr v. Lyons, et al., Case No. 72-286, Civil, U. S. District Court for the Western District of Oklahoma. At the government's request, the judgment in that case became final on July 18, 1974. Consequently, Mr. Marr was retroactively reinstated to his former position on August 14, 1974, and, on December 27, 1974, he received backpay and allowances in the gross sum of \$68,834.24. By letter of October 13, 1975, Mr. Marr requested that our Office reconsider the Settlement Certificate of August 28, 1975. Enclosed is a copy of our decision of today B-178551, wherein we sustained the disallowance of Mr. Marr's claim for attorney's fees and court costs. For the reasons stated therein we also disallowed his claim for severance pay.

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As requested, we are returning herewith the enclosures which you forwarded with your letter of October 20, 1975.

Sincerely yours,

Paul G. Demblin

Acting Comptroller General
of the United States

Enclosures