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**DECISION**



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

**FILE:** B-198941

**DATE:** August 19, 1980

**MATTER OF:** Louis Rubinstein - Grade and Pay Retention

**DIGEST:** Employee who held GS-13 position with the National Aeronautics and Space Administration transferred to the Department of the Air Force where he accepted a GS-12 position after he received notice that NASA planned to reassign him from California to Florida because it was expected that there would no longer be a need for his position in California. He is not entitled to grade and pay retention under 5 C.F.R. § 506.202 since he was not placed in a lower-grade position as a result of declining to transfer with his function, but rather as a voluntary action based on his belief that a RIF was impending.

This is in response to a request from Mr. Louis Rubinstein that we review our Claims Division Settlement No. Z-2820535, April 23, 1980, which denied his [claim for retroactive pay and grade retention]

Mr. Rubinstein contends that the settlement is erroneous because he was provided with specific notice by an appropriate official of the National Aeronautics and Space Administration (NASA) that NASA was planning to reassign him from his GS-13 position at NASA's Western Launch Operations, Vandenberg Air Force Base, California, to a position at the same grade at the Kennedy Space Center, Florida. He says that he accepted a lower-grade position (GS-12) with the Department of the Air Force at Vandenberg Air Force Base effective January 1, 1980, on the basis of declining to transfer to Florida. For the reasons set forth below, we find that Mr. Rubinstein is not entitled to retroactive pay and grade retention because his transfer was a voluntary action and was not the direct result of declining a transfer with his function.

The record indicates that a memorandum entitled "Planned Reassignment" dated September 23, 1977, was sent to Mr. Rubinstein by the Director of Safety, R&QA, and Protective Services, NASA, Kennedy Space Center, Florida, which reads as follows:

"This is to give you advance notice that we currently plan to reassign you to an AST, Flight

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Systems Safety, GS-13, position in the Engineering Office, SF-ENG, here at the Kennedy Space Center no later than March 1978. At present, this action is considered necessary because it is expected there will no longer be a need for your present position at Vandenberg at that time\* \* \*."

The Office of Personnel Management (OPM) has issued interim regulations on grade and pay retention under title VIII of the Civil Service Reform Act, Pub. L. No. 95-454, 92 Stat. 1111, 1218, October 13, 1978 (5 U.S.C. §§ 5361-5366). See title 5, Code of Federal Regulations, Part 536, and Federal Personnel Manual Bulletin 536-1, March 30, 1979. Those regulations are applicable to employees reduced in grade on and after January 1, 1977, under certain conditions. See 5 C.F.R. § 536.217. Under its authority at 5 U.S.C. § 5365(b)(3) to provide for application of all or portions of the statutory grade and pay retention provisions of that subchapter to justifiable situations, OPM, at 5 C.F.R. § 536.202(a), has extended grade retention and pay retention to individuals who decline to transfer with their functions and who, prior to separation for declining to transfer, are placed in a lower-graded position provided:

"(1) The transfer of function is to a location outside the employee's commuting area; and

"(2) The employee has served for 52 consecutive weeks or more in one or more positions at a grade or grades higher than that of the lower-graded position in which placed."

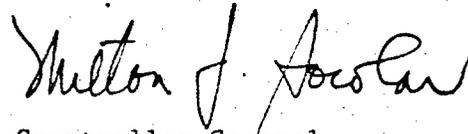
Grade retention (and subsequent pay retention, if applicable) under 5 C.F.R. § 536.202(a) is specifically subject to the provisions and restrictions of the statute and the other regulations. 5 C.F.R. § 536.202(b).

Mr. Rubinstein was not placed in a lower-grade position as a result of declining to transfer with his function, but rather as a result of his personal request. The implementing regulations expressly provide that grade and pay retention do not apply to an

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employee who is reduced in grade at his own request. 5 C.F.R. § 536.208. As Mr. Rubinstein pointed out, he chose not to risk the possibility of not finding a suitable position in his commuting area had reduction-in-force procedures ultimately been initiated. Although it is a completely understandable decision, particularly in view of the September 23, 1977, notice quoted above, we do not believe that these are circumstances which qualify for the remedy of grade and pay retention authorized by the regulations cited above. Neither a reduction-in-force nor adverse action was initiated since Mr. Rubinstein had transferred to the Air Force.

Accordingly, Mr. Rubinstein is not entitled to retained grade and pay under 5 U.S.C. § 5361 et seq. in connection with his acceptance of a lower-grade position with the Department of the Air Force.



For the Comptroller General  
of the United States