

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

FILE: B-207176

DATE: January 6, 1983

MATTER OF: Juan S. Griego

DIGEST:

(1) There is no authority to allow interest on backpay provided for in a Conciliation Agreement entered in the settlement of a law suit which alleged discriminatory conduct by Government officials. It is a well-settled rule of law that interest may be assessed against the Government only under express statutory authority; and neither the Equal Employment Opportunity Act, the incorporated provisions of title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., nor any other act provides express authorization of interest against the Government in this situation.

(2) Under 5 U.S.C. 8334(d) payment of interest is required upon redeposit of contributions to the Civil Service Retirement Fund which were refunded to an employee. However, since the Office of Personnel Management has full authority to administer the Civil Service Retirement Act, any question regarding the conditions under which service may be credited for retirement purposes should be referred to that Office.

The National Guard Bureau requested an advance decision regarding the implementation of a Conciliation Agreement entered into in August 1981 settling a lawsuit filed by Mr. Juan S. Griego in the United States District Court for the District of New Mexico, Civil Action No. 77-316 M, filed June 2, 1977. In that suit Mr. Griego alleged certain discriminatory conduct by the New Mexico National Guard in violation of title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq., and Executive Order No. 11478. The Conciliation Agreement awards backpay to Mr. Griego as a National Guard technician for a period of separation. It also provides that it is understood that Mr. Griego believes himself entitled to interest

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on the backpay at a rate of 12 percent, but because the National Guard lacks authority to pay the interest, no interest will be paid under the Agreement, and Mr. Griego may present his claim for interest to the Comptroller General. In addition, the Agreement allows Mr. Griego to redeposit Civil Service retirement contributions which were refunded at his separation and permits the waiver of interest on the redeposit upon approval of the Comptroller General or the Office of Personnel Management. The two questions presented to us are (1) whether an employee may receive interest on backpay awarded him under an agreement entered into for the purpose of settling a discrimination suit brought under 42 U.S.C. 2000e-16, and (2) whether interest may be waived upon redeposit of money into the Civil Service Retirement and Disability Fund.

The Equal Employment Opportunity Act of 1972, Public Law 92-621, 86 Stat. 111, amended title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., to prohibit discrimination in the Federal Government on the basis of race, color, religion, sex, or national origin. The Equal Employment Opportunity Commission has the authority to enforce the provisions of title VII with regard to Federal employees through appropriate remedies including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of title VII, and issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities. See 42 U.S.C. 2000e-16(b); Reorganization Plan No. 1 of 1978; and Executive Order No. 12106, December 26, 1978, set out as notes under 42 U.S.C. 2000e-4 (Supp. IV. 1980).

Concerning the payment of interest in connection with a backpay award, it is a well-settled rule of law that interest may be assessed against the Government only under an express statutory or contractual authorization. Fitzgerald v. Staats, 578 F.2d 435 (D.C. Cir. 1978); 54 Comp. Gen. 760, 764 (1975); 45 Comp. Gen. 169 (1965). Neither the Equal Employment Opportunity Act of 1972, the incorporated provisions of title VII of the Civil Rights Act, nor any other statute provides an express authorization for payment of interest by the Government in a case such as this. In the absence of an express provision allowing interest in claims against the Government, there is no basis to allow the payment of interest under title VII. Fischer v. Adams 572 F.2d 406, 411 (1st Cir. 1978); Richerson v. Jones 551 F.2d 918, 925 (3d Cir. 1977); de Weever v. United States,

618 F.2d 685 (10th Cir. 1980). Thus, we held in Matter of Albarado, 58 Comp. Gen. 5 (1978), that there is no authority to pay interest on an award of backpay in the context of a discrimination complaint arising under 42 U.S.C. 2000e-16(b). While Mr. Griego's attorney has cited the case of Murphy v. Reed, Civil No. 77-031-P, U.S. District Court, New Mexico, June 1977, for the proposition that interest may be paid on awards of backpay for actions arising under the Civil Rights Act of 1964, in light of the overwhelming authority to the contrary, we will follow the established rule. Accordingly, we find there is no authority to pay interest on backpay to Mr. Griego under the Conciliation Agreement.

With regard to the question of waiving interest on redeposits to the Civil Service Retirement and Disability Fund, we have been informally advised by Office of Personnel Management that if an employee has received a refund of deductions made under the Civil Service Retirement System and wishes credit for the service in the computation of an annuity, the refund must be redeposited in the Retirement Fund, with interest, as required by 5 U.S.C. 8334(d) which provides:

"(d) Each employee or Member who has received a refund of retirement deductions under this or any other retirement system established for employees of the Government covering service for which he may be allowed credit under this subchapter may deposit the amount received, with interest. Credit may not be allowed for the service covered by the refund until the deposit is made." (Emphasis added.)

Any determination of conditions under which service may be credited for retirement purposes under the Civil Service Retirement System is a matter within the jurisdiction of the Office of Personnel Management, not our Office. See 5 U.S.C. 8347, and Matter of Collins, 61 Comp. Gen. 127, 129 (1981). Therefore, for an authoritative determination on this aspect of Mr. Griego's case, it should be referred to the Office of Personnel Management for consideration.

for 
Comptroller General
of the United States