DECISION

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

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FILE: B-215626 DATE: January 7, 1985

MATTER OF: James B. Ruch

DIGEST:

A reinstated employee eligible for back-pay under 5 U.S.C. 5596 may be reimbursed for the costs of training he incurred during period of improper removal if it is clear he would have received the training at Government expense had the removal not occurred. However, there is no authority for reimbursement of private health care costs or consequential damages, under the Back Pay Act.

Mr. James B. Ruch, an employee of the Bureau of Land Management, Department of the Interior, was removed from duty on January 14, 1983, and was returned to duty on January 30, 1984, after the removal action was cancelled by Merit Systems Protection Board decision. We have been asked whether he may be paid for a previously authorized training course, for interest on personal funds used while separated, and for the cost of private health care during that period.[1] He may be paid personally incurred training costs, but not interest or health care costs.

Apparently as part of a back-pay settlement Mr. Ruch is requesting reimbursement for the cost of classes he took at his own expense because the Government would have paid for those classes pursuant to a previously approved individual development plan had he not been separated. He also claims the interest he would have earned on savings which he used for living expenses during his period of removal, the interest on the loans he took out for living expenses during his period of removal, and the amount spent for private health insurance during that period.

The Agency has indicated that it finds no authority which would allow reimbursement of these items. Although

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1/ Mr. Edward P. Greenberg, Chief, Division of Finance, Bureau of Land Management, Department of the Interior, has requested our decision in these matters.

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not specifically stated we assume these payments would be part of a back-pay award under the Back Pay Act, 5 U.S.C. § 5596.

The Back Pay Act provides, generally, that an employee who is found by an appropriate authority to have undergone an unjustified or unwarranted personnel action which results in the withdrawal or reduction of all or part of his pay, allowances, or differentials is entitled to receive an amount equal to the pay, allowances or differentials he normally would have received, less amounts earned by him elsewhere during the period.

Regulations implementing the Back Pay Act, promulgated by the Office of Personnel Management, provide that an agency shall compute the pay, allowances, or differentials of the employee as if the unjustified or unwarranted personnel action had not occurred. However, in no case will the employee be granted more pay, allowances, or differentials than he or she would have been entitled to if the unjustified or unwarranted personnel action had not occurred. 5 C.F.R. § 550.805(a)(b).

Training Expenses

The statutory authority for payment of training expenses is found at 5 U.S.C. § 4109, which provides that the head of an agency may pay, or reimburse the employee for all or part of the necessary expenses of training. Under the Back Pay Act an employee who is found by an appropriate authority to have been affected by an unjustified or unwarranted personnel action which resulted in the withdrawal or reduction of his pay, allowances, or differentials is deemed to have performed service during that period. 5 C.F.R. § 550.806(b) (1984). It appears that, after he was improperly separated, Mr. Rush continued with the training which had been approved by his agency. We understand that he seeks reimbursement of the costs he paid for the training because the Government would not pay such costs during the period of his wrongful separation. The terms pay, allowances, or differentials may be applied broadly to cover all monetary benefits an individual would have received. Thus, if Mr. Ruch paid for training which the Government would have paid for but for the unjustified removal, the cost involved may be reimbursed to him.

Health Benefits

In the case of employee health benefits a specific remedy is provided for employees who have been removed due

to an unjustified personnel action. An employee has the choice of enrolling in a health benefit plan as a new employee after reinstatement, or he may have his old coverage reinstated in which case he pays the costs and receives health benefits as though his removal had not occurred. 5 U.S.C. § 8908.

If the employee chooses to have coverage, the costs and benefits from the health insurance are calculated as if he had been covered all the time. However, if he chooses to enroll as a new employee he is treated as not having been covered and deductions for health benefits are not made from his backpay.

Thus, a remedy is provided for employees, but it does not provide for reimbursement by the Government for the cost of private health coverage which may have been obtained. See B-167875, October 31, 1969. Accordingly, the cost of private health insurance may not be included as part of a back-pay settlement.

Interest

Mr. Ruch also claims reimbursement of an amount equal to the interest which he would have received on savings had the funds not been spent during his unjustified removal. He also seeks reimbursement of interest paid on loans necessitated by his unjustified removal. The Back Pay Act provides no authority for payment of compensatory damages, nor are we aware of any other authority providing for such payment. We have consistently held that the Back Pay Act does not authorize the payment of incidental expenses incurred by an employee as a consequence of an unjustified or unwarranted personnel action. The act authorizes only payment of an amount the employee would have received if the erroneous personnel action had not occurred. Therefore, although the expenses for which Mr. Ruch claims reimbursement may have been due to his separation and subsequent reinstatement, since they are not allowances he would have received if he had not undergone the erroneous personnel action, they may not be paid by the Government. See John H. Kerr, 61 Comp. Gen. 578 (1982).

Conclusion

For the reasons stated neither the interest costs nor the cost of private health insurance may be included in the

amount of pay, allowances, or differentials which are payable under the Back Pay Act. Consequently, only the training costs to which Mr. Ruch would have been entitled and for which he incurred a personal expense are reimbursable.

for Milton J. Socolar
Comptroller General
of the United States