

Metcalf
PLM-II
3944

DECISION



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

FILE: B-217860

DATE: August 14, 1985

MATTER OF: Robert F. Birks

DIGEST:

Employee of the Navy claims entitlement to environmental differential pay for exposure to toxic chemicals used for pest control while employed as a gardner. Agency concludes that protective equipment was available which, if worn, would eliminate the potential for personal injury and that the criteria for such pay have not been met for the period claimed. GAO will not substitute its judgment for the agency's in the absence of clear and convincing evidence that the agency's determination was arbitrary and capricious.

Mr. Robert F. Birks, an employee of the Department of the Navy, requests reconsideration of our Claims Group's denial of his claim for environmental differential pay for the period January 17, 1983, to August 21, 1983.^{1/} Since his agency determined on the basis of an Industrial Hygiene Evaluation that personal protective equipment was available which, if worn, would practically eliminate potential for personal injury, he does not meet the criteria to establish entitlement to environmental differential pay.

Mr. Birks was employed as a Gardner (Tractor Operator) at the Naval Air Station, Kingsville, Texas, and as part of his job was required to use toxic chemicals (herbicides, insecticides, and fungicides) for pest control. In response to his application for environmental differential pay, his agency requested that an evaluation be performed by the Industrial Hygiene Branch, Naval Hospital, Naval Air Station, Corpus Christi, Texas. The evaluation report, based on a site inspection, concluded that protective personal equipment was available which, if worn, would practically eliminate the potential for personal injury. The Director, Wage and Classification Division, Civilian Personnel Department, Naval Air Station, Corpus Christi, Texas, reviewed the industrial hygiene survey results together with Mr. Birks'

^{1/} Mr. Birks' claim was denied by Settlement Certificate No. Z-2854952 dated December 7, 1984.

032832 / 127642

B-217860

position description and determined that payment of an environmental differential was not warranted.

Mr. Birks states that the protective equipment and clothing available to him was inadequate, worn-out, or otherwise unusable and could not have eliminated the danger involved in handling the chemicals he worked with. However, the Navy's administrative report indicates that the personal protective equipment at his work site was adequate to have practically eliminated the potential for personal injury.

Authority for payment of environmental differential pay is contained in Federal Personnel Manual (FPM) Supplement 532-1. Subchapter S8-7 provides authority for the payment of environmental differentials for exposure to various degrees of hazards, physical hardships, and working conditions of an unusually severe nature. Appendix J of FPM 532-1, Instruction 17, effective April 14, 1980, provides an 8 percent wage differential for working with or in close proximity to toxic chemicals which involve potential for serious personal injury and wherein protective devices and/or safety measures have not practically eliminated the potential for such personal injury.

The authority to determine whether the assigned duties of an employee involved situations for which environmental differential is authorized is vested primarily in the agency concerned. Cecil C. Frederici, B-197142, February 12, 1980. This Office will not substitute its judgment for that of agency officials who are in a better position to investigate and resolve the matter, unless we find clear and convincing evidence that the agency decision was wrong or that it was arbitrary and capricious. National Association of Government Employees, B-181498, January 30, 1975. Our review of the record reveals that the Navy had a reasonable basis for concluding that Mr. Birks' case did not meet the standards for payment of environmental differential for exposure to toxic chemicals. Therefore, we will not disturb the agency's determination. Victor C. Spencer, B-194289, June 27, 1979.

Accordingly, the disallowance of Mr. Birks' claim by the Claims Group is sustained.

for 
Comptroller General
of the United States