

DECISION

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

FILE:

B-184453

DATE: AUG 20 1976

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98650

MATTER OF:

Albin C. Hammond - Retirement - Effective Date

DIGEST:

Employee, unaware of liberalized annuity computation formula effective July 12, 1974, was separated for optional retirement effective June 30, 1974. Employee may not be restored to the rolls in order to set the date of retirement on or after July 12, 1974, to take advantage of such formula in Public Law 93-350 where the separation date was set properly by the agency.

We have been asked to review the record pertaining to the establishment of the effective date of retirement from Federal service of Mr. Albin C. Hammond. Mr. Hammond through his attorney, Donald R. Marble, appealed the decision of the Bureau of Retirement, Insurance, and Occupational Health, Civil Service Commission, not to grant Mr. Hammond retirement as a firefighter under the provisions of Public Law 93-350, approved July 12, 1974, 88 Stat. 355; to the Commission's Appeals Review Board which affirmed the prior decision.

The decision of the Appeals Review Board in pertinent part states:

"STATEMENT OF THE CASE"

"The record of his service certified to the Commission shows that appellant's pay ceased on June 28, 1974, and that he was separated for optional retirement on June 30, 1974, from the position of Air Operations Specialist with the Division of Fire Management, Forest Service, U. S. Department of Agriculture. His annuity was computed under the special provisions of section 8336(c) of title 5, United States Code, then in effect. However, it is contended on behalf of the appellant that other records indicate appellant was on leave without pay through July 15, 1974, and that the personnel action separating him from the agency rolls effective June 30, 1974 was made retroactively.

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"Public Law 93-350 liberalized the annuity computation formula for persons retiring under 8336(c). The effective date of the law was July 12, 1974.

"REPRESENTATIONS TO THE
APPEALS REVIEW BOARD

"It is contended on behalf of the appellant that in order to take advantage of a cost-of-living increase payable to annuitants retired before July 1, 1974, appellant requested and was retroactively granted the June 30, 1974 separation by his agency. The appellant further contends: (1) that since no agency official advised him of the pending legislation (Public Law 93-350), he was not acting in an informed, voluntary capacity when he requested his separation date; and (2) that since he was originally carried in a leave without pay status on the rolls of the Forest Service beyond July 12, 1974, he is entitled to the liberalized benefits of Public Law 93-350. In addition, it is contended on behalf of the appellant that the agency should have informed him of the pending legislation.

"ANALYSIS AND FINDINGS

"The benefits of Public Law 93-350 are available only to those employees separated on or after its effective date. A Federal employee's effective separation date is set by his agency. Numerous decisions of the Comptroller General have held that the Commission cannot, in administering the retirement law, rescind or change a proper separation except to correct an obvious mistake of fact. The situation described by the appellant does not constitute such a mistake. Therefore, the Board has no jurisdiction in the matter of rescinding or changing the effective date of separation in this case. * * *"

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The Appeals Review Board concluded that Mr. Hammond's optional retirement under 5 U.S.C. § 8336(c) was effected properly prior to July 12, 1974, the effective date of the liberalized provisions of Public Law 93-350. The decision also stated that matters pertaining to effective date of separation are adjudicated by the Comptroller General and that a remedy may be sought through that channel.

An employee may be restored to the rolls of his former agency only where there was a bona fide error or a violation of a valid regulation in effecting the separation. There appeared to be no such error on the record before the Commission. The Forest Service, after a review of the case including the extent of agency responsibility in the retirement process, reported in pertinent part as follows:

"The letter of Mr. Donald R. Marble on behalf of Mr. Hammond states that 'in early spring of 1974, being informed that he was eligible for an early retirement under 5 U.S.C. 8336(c), he filed an appropriate application for same. An effective date of spring of 1974 was requested.' This agrees with Mr. Hammond's application for retirement, signed March 15, 1974, requesting an effective date of April 15, 1974.

"On June 26, 1974, the Civil Service Commission approved the application for retirement. Notice of this was passed on to the employing office by telephone on June 25, 1974, and in writing on July 11, 1974. On July 16, 1974, the employing office received the Request for Personnel Action from the office of Mr. Hammond's supervisor, with a proposed effective date of June 30, 1974. They subsequently processed a personnel action with that effective date. Later it was corrected to July 5, 1974, because time and attendance records showed Mr. Hammond on LWOP until July 5, 1974."

As pointed out above, a Federal employee's effective separation date is set by his agency and may only be changed where there is a bona fide error or violation of a valid regulation

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in effecting the separation. We find no error in the record before us leading to the Civil Service Commission conclusion that Mr. Hammond's optional retirement under 5 U. S. C. § 8336(c) was effected properly prior to July 12, 1974, the effective date of the liberalized provisions of Public Law 93-350.

Although the Forest Service now states it would have no objection to our adjudicating a change favorable to Mr. Hammond, it concludes that the employing office acted correctly in accordance with Mr. Hammond's expressed intent. The fact that the employing office would have advised Mr. Hammond, had it known, of the provisions of Public Law 93-350 immediately on or before the date of its passage, July 12, 1974, does not constitute an error that would permit changing the effective date of Mr. Hammond's separation, which was found to be set properly.

Deputy

R.F. KELLER

Comptroller General
of the United States