

DECISION

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

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FILE: B-164378

DATE: APR 28 1976

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MATTER OF: Llewellyn Lieber--Overseas Dependents
Schools--Backpay

- DIGEST:
1. Claim of teacher in DOD Overseas Dependents School System for backpay for the period 1959-66, based upon allegedly improper implementation of Public Law 86-91, is controlled by Court of Claims holding in Crawford v. United States, 376 F.2d 266 (1967). Since that case held that salaries were properly set under the law, the claim is disallowed.
 2. There is no definite time for filing request for reconsideration of settlement certificate issued by GAO Claims Division. However, request received 9 years after date of settlement is not a timely request and full legal review will not be made. Nevertheless, review of factual contentions concerning claim for additional pay because of delay of step increase has been made. Review indicates claim is without merit since employee took excessive leave without pay and, thus, delay was required.

This matter concerns a series of claims submitted by Dr. Llewellyn Lieber, a teacher employed by the Overseas Dependents School System, Department of Defense. By letter of March 8, 1971, Dr. Lieber summarized and reasserted claims she had been making since about 1960, and presented one entirely new claim. Action on all of her claims was held in abeyance pending final resolution of March v. United States, 506 F.2d 1306 (D. C. Cir. 1974). On June 30, 1975, a final judgment was entered in that action and that judgment is now being implemented.

At this time we will render a decision concerning two of Dr. Lieber's claims. The remaining two claims will be forwarded to the Department of Defense for development and comment, and they will be the subject of a later decision.

I. BACKPAY

Since 1966 Dr. Lieber has been claiming backpay for the period beginning with the passage of Public Law 86-91, July 17, 1959,

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73 Stat. 213. That Act removed teachers in the Overseas Dependents School System from the Classification Act of 1949 and the General Schedule pay system, and created a separate pay setting mechanism solely for the teachers. Section 5(c) created that mechanism by providing that:

"(c) The Secretary of each military department shall fix the rates of basic compensation of teachers and teaching positions in his military department in relation to the rates of basic compensation for similar positions in the United States but no such rate of basic compensation so fixed shall exceed the highest rate of basic compensation for similar positions of a comparable level of duties and responsibilities under the municipal government of the District of Columbia."

This pay setting system was amended by Public Law 89-391, April 14, 1966, 80 Stat. 117, 20 U.S.C. § 903(c), to provide that:

"(c) The Secretary of each military department shall fix the basic compensation for teachers and teaching positions in his military department at rates equal to the average of the range of rates of basic compensation for similar positions of a comparable level of duties and responsibilities in urban school jurisdictions in the United States of 100,000 or more population."

Because of the 1966 amendment, Dr. Lieber's claim must be considered in two parts, that part from 1959 to 1966 and the part from 1966 to the present.

A. Backpay, 1959-1966

The manner in which the Department of Defense implemented Public Law 86-91 was considered by the Court of Claims in Crawford v. United States, 376 F.2d 266 (Ct. Cl. 1967), cert. denied 389 U.S. 1041 (1968). In that case the court considered and rejected the various arguments raised here by Dr. Lieber, and held that the Department of Defense was correctly applying and implementing Public Law 86-91. Since the Supreme Court declined

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to hear the case, we consider the Court of Claims holding dispositive of Dr. Lieber's claim for backpay for the period 1959-1966. Accordingly, Dr. Lieber's claim for backpay for the period 1959-1966, based upon the allegation that the Department of Defense incorrectly implemented Public Law 86-91, is disallowed.

B. Backpay, 1966 to the Present

The Department of Defense's implementation of Public Law 89-391 has also been tested in the courts. In Trecosta v. United States, 194 Ct. Cl. 1025 (1971), the Court of Claims ruled that the procedures used by the Department of Defense under Public Law 89-391 were proper. However, in March v. United States, 506 F.2d 1306 (D.C. Cir. 1974), the Court of Appeals held that the Department of Defense had not properly implemented Public Law 89-391, and that teachers in the Overseas Dependents School System were entitled to backpay from the date of enactment, April 14, 1966, to the end of the 1974-75 school year. The case was remanded to the U. S. District Court for the District of Columbia for a determination of damages. We are not aware of any appeals in either action, therefore, both decisions are final judgments.

March v. United States, *supra*, was brought as a class action. When judgment was entered in the District Court on June 30, 1975, four individuals were specifically excluded from its coverage. Mr. Rocco A. Trecosta was excluded because he was the plaintiff in Trecosta v. United States, *supra*. We have been advised that the other three individuals, Ms. Alda M. Guevarra, Ms. Elizabeth B. Dozier and Dr. Llewellyn Lieber, were excluded because they specifically chose not to be members of the class. Therefore, none of these individuals is entitled to recover anything under the terms of the judgment itself. Any recovery to which they might be entitled must be administratively determined independent of the judgment in March v. United States, *supra*. In this connection it has long been the position of our Office that decisions of the Court of Claims, Courts of Appeal and other courts inferior to the United States Supreme Court, are persuasive but not binding upon this Office except in cases involving the same claimants as in the court decisions. See B-165571, June 1, 1972, and cases cited therein. Therefore, Dr. Lieber's right to recover backpay from 1966 to the present must be separately determined based upon the merits of her claim, all the surrounding facts, and all pertinent legal authorities.

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Accordingly, we are requesting the views of the Department of Defense regarding Dr. Lieber's right to recover backpay, and the amount due, if it is decided that she is in fact entitled to backpay. When that report is received, the issues will then be resolved by this Office.

II. DELAYED STEP INCREASE

Dr. Lieber also requested reconsideration of Settlement Certificate No. Z-2116458, issued March 9, 1962, by our Claims Division, which upheld the administrative denial of her "step-increase" immediately prior to her conversion from the General Schedule to the teacher's pay schedule under Public Law 86-91. The Air Force reported that the effective date for Dr. Lieber's step increase was delayed because she had accumulated leave without pay in excess of the allowable amounts. We have no record of any appeal of this settlement by Dr. Lieber prior to her claim letter of March 8, 1971, 9 years after the date of settlement.

Under our regulations, 4 C.F.R. § 32.1 (1975), review of settlements is discretionary with the Comptroller General. We have generally required that requests for review be submitted within a reasonable time, and have held that 3 years (B-157883, December 30, 1965) and 8 years (B-155521, February 23, 1965) are not reasonable times. Without attempting to strictly define what constitutes a reasonable time, we do not believe that a request for reconsideration submitted 9 years after the date of the settlement is a timely request for reconsideration. Therefore, we will not conduct a full legal review of that settlement.

Nevertheless, we have examined Dr. Lieber's factual contentions regarding the settlement and find them to be without merit. We note that Dr. Lieber's entire argument seems to rest upon what she considers to be the improper completion of her Leave Record (Standard Form 1137) for the leave year 1959. We have examined that document and have found it to be correct. The leave record shows Dr. Lieber began the year with an accrued leave balance of 64 hours of annual leave. She accumulated 160 hours of annual leave during the year, and had a total of 224 hours of leave available for use. The leave record shows Dr. Lieber took 142 hours of annual leave and had her leave credits reduced by 24 hours for those periods when she was on leave without pay, leaving her with an annual leave balance of 58 hours.

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at the end of the year, all of which was accumulated after the beginning of 1959-60 school year. The total of 166 hours was properly subtracted from the total annual leave available for use during 1959.

The leave record also shows that Dr. Lieber was charged with 330 hours of leave without pay between July 4 and August 29, 1959. The charges to leave without pay did not begin until Dr. Lieber had exhausted all of her annual leave then available for use. At that time, 5 C.F.R. § 25.1(d) (1960) defined the types of service that were creditable toward the "waiting periods" required for step increases. Section 25.1(d)(2) provided that "[L]eave without pay, furlough, or suspension not in excess of two work weeks," was creditable toward the required "waiting period" for step increases. Dr. Lieber was charged with 330 hours of leave without pay, or 250 hours more than 2 workweeks. This was the length of time used by the Air Force in delaying Dr. Lieber's step increase, and was entirely proper.

III. PROPER SALARY SCHEDULE

Finally, Dr. Lieber contends that she was not consistently given credit for her proper educational level, a masters degree plus 30 additional credit hours. This is an entirely new claim and must be developed before it can be definitively resolved. We note that this claim was first received in this Office on March 29, 1971. Under 31 U.S.C. § 71a (1970) all claims are barred unless received in our Office within 10 years (This period was later reduced to 6 years. See Public Law 93-694, January 2, 1975, 88 Stat. 1965.). Therefore, Dr. Lieber's claim may be considered only for the period from March 29, 1961, to the present. A report regarding this claim has also been requested from the Department of Defense, and a determination will be included in our forthcoming decision.

Paul G. Dembling

For the Comptroller General
of the United States