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DECISION



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

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FILE: B-203754

DATE: February 26, 1982

MATTER OF: Daniel Prockish - Grade and Salary Protection Benefits

DIGEST: Employee of Department of Navy who transferred from a WG-10 step 5 position in Adak, Alaska, to a WG-10 step 5 position in Fallon, Nevada, a lower wage area, is not subject to grade retention under 5 U.S.C. § 5362 since he was not reduced in grade. Grade retention under 5 U.S.C. § 5362 is applicable only where an employee suffers a reduction in grade as a result of a reclassification action or a reduction in force. He suffered a reduction in pay as the result of his transfer to a lower wage area and, by virtue of the specific provision at 5 C.F.R. 536.212(a)(2) (1980), he is entitled to pay retention benefits under 5 U.S.C. 5363.

By letter dated June 2, 1981, Mr. Daniel Prockish, through his attorney Ms. Nada Novakovich, appealed the action of our Claims Group which denied his claim for grade retention pursuant to 5 U.S.C. § 5362. Since Mr. Prockish was not reduced in grade as the result of a reduction in force or a classification action, the disallowance by the Claims Group is sustained.

Mr. Prockish was employed as an Automotive Mechanic, WG-10, step 4, at the Naval Air Station, Fallon, Nevada, and effective November 4, 1974, he transferred as an Automotive Mechanic, WG-10, step 4, to the Naval Station, Adak, Alaska. In February 1980 Mr. Prockish indicated that he intended to exercise his return rights for employment at the Naval Air Station in Fallon, Nevada, a lower wage area. At that time he was an Automotive Mechanic, WG-10, step 5, with a pay rate of \$17.26 per hour. Mr. Prockish contended that incident to his transfer to Fallon, Nevada, he was entitled to grade retention pursuant to 5 U.S.C. § 5362. Thus, he requested that the Naval Air Station at Fallon pay him for 2 years at the grade WS-19 step 1 salary rate of \$17.47 per hour which he asserted is the equivalent of the WG-10, step 5 position he occupied in Adak, Alaska. The agency denied the requested pay rate on the basis that he would not be entitled to grade retention under 5 U.S.C. § 5362 since his transfer

was at the same grade level, WG-10, step 5, and thus did not constitute a reduction in grade.

In July of 1980, upon his return to the WG-10, step 5 position at the Naval Air Station in Fallon, Nevada, a lower wage area, Mr. Prockish was provided pay retention pursuant to 5 U.S.C. § 5363 and the implementing regulations set forth at 5 C.F.R. Part 536 (1980). See specifically 5 C.F.R. § 536.212(a)(2) (1980). The basic salary for the WG-10 step 5 position in Nevada was \$9.72 per hour. Under 5 U.S.C. § 5363, his pay was set at 150 percent of that rate, or \$14.58 per hour.

Mr. Prockish filed a claim with the Claims Group in October 1980 for backpay and a salary adjustment on the basis that his transfer to the Naval Air Station at Fallon, Nevada, involved a reduction in grade that entitled him to grade retention under 5 U.S.C. § 5362. He argued that his rate of pay should have been established at \$17.47 per hour rather than \$14.58 per hour upon his transfer in June 1980. By Certificate of Settlement dated March 25, 1981, the Claims Group disallowed Mr. Prockish's claim on the basis that he was not entitled to grade retention under 5 U.S.C. § 5362 since he was not reduced in grade as the result of a reduction in force or a reclassification action.

Mr. Prockish, through his attorney, has appealed the disallowance by the Claims Group. The basis for the appeal is the contention that Mr. Prockish was entitled to the benefits of grade retention since he "retained the grade" upon transfer to the Naval Air Station at Fallon, Nevada. Concerning Mr. Prockish's proper rate of pay, his attorney cites the regulation now codified at 5 C.F.R. § 536.205 (1981) which is set forth in Attachment 1 to FPM Bulletin No. 536-9, effective January 22, 1981. This regulation provides that an employee who becomes entitled to grade retention or moves to another position during a period of grade retention which permits continuation of grade retention, is entitled to the rate of basic pay from the applicable rate schedule for the grade and step held before the movement.

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Title VIII of the Civil Service Reform Act of 1978, amended title 5, United States Code, by adding sections 5361 et seq., which provide grade and pay retention for certain Federal employees. Section 5362 of title 5, United States Code, provides grade retention for a qualifying employee who is reduced in grade as the result of a classification action or a reduction in force.

Since Mr. Prockish's change in position was not the result of a reduction in force or a reclassification action, he would not be entitled to grade retention under 5 U.S.C. § 5362 even if his transfer had involved a reduction in grade. Although Mr. Prockish's transfer involved a move to a lower wage area it did not involve a reduction in grade. He transferred to a position at the Naval Air Station at the same grade he had held in Adak, Alaska--WG-10, step 5. Thus, the agency properly refused to apply the provisions of 5 U.S.C. 5362 in this case.

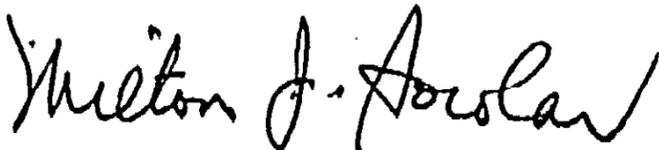
Contrary to that suggestion by Mr. Prockish's attorney, an employee who transfers to a position at the same grade is not necessarily entitled to the rate of pay he received prior to transfer. Where his new position is at the same grade but at a lower rate of pay, as where the employee transfers to a lower wage area, he is entitled to the pay retention benefits under 5 U.S.C. § 5363(a)(3). By 5 C.F.R. 536.212(a)(2) (1980), the Office of Personnel Management has extended pay retention benefits to "any employee whose rate of basic pay would otherwise be reduced * * * as a result of * * * reassignment to a position in a lower wage area." Under 5 U.S.C. § 5363(b) the allowable rate of basic pay which is to be retained is the lower of the rate of basic pay payable to the employee before the reduction in pay or 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay.

The rate of pay received by Mr. Prockish in Adak, Alaska as a WG-10, step 5 was \$17.28 per hour. The basic salary for a WG-10 at Fallon, Nevada, at the time of Mr. Prockish's transfer was \$9.72 per hour. As

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required by 5 U.S.C. § 5362(b) the agency set his pay at 150 percent of \$9.72 per hour, for a rate of \$14.58 per hour, since that rate is lower than \$17.28 per hour.

For the reasons stated above, we sustain the Claims Group's disallowance of Mr. Prockish's claim for backpay and an increase in his rate of pay.

for 
Comptroller General
of the United States