DECISION

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

PLM-I
29328

FILE: B-202291 DATE: September 17, 1984

MATTER OF: Charles W. Bird, et al. - Claim for Backpay, Leave and Pension Benefits - Res Judicata

DIGEST:

Employees seek a Comptroller General decision on their entitlement to backpay, additional leave and pension benefits. The General Accounting Office adheres to the doctrine of res judicata to the effect that a valid judgment of a court on a matter is a bar to a subsequent action on that matter before the General Accounting Office. 62 Comp. Gen. 399 (1983). Since in Charles W.Bird, et al. v. United States, No. 94-81C (Ct. Cl. Aug. 6, 1982) (order granting motion to dismiss), it was previously decided that the employees failed to present a claim for a money damages remedy for their alleged improper classification as intermittent employees, the General Accounting Office will not consider their claim.

Mr. Charles W. Bird and 18 other present and former employees of the Immigration and Naturalization Service (INS) request that we reopen their claim that for varying periods of time dating back to 1957, they were improperly classified as intermittent rather than part-time employees. We refused to consider their claims by letter dated June 10, 1981, because the same issues were also pending before the Court of Claims as a result of a petition filed by the claimants. The Court of Claims specifically decided in this same matter that the claimants failed to present a claim for a money damages remedy for their alleged improper classification as intermittent employees. Charles W. Bird, et al. v. United States, No. 94-81C (Ct. Cl. Aug. 6, 1982) (order granting motion to dismiss). The issue is whether the General Accounting Office will consider the claim in light of the previous judgment of the Court of Claims denying it. We conclude that their claim will not be considered because it is barred by our application of the doctrine of res judicata.

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The claimants are all present and former Immigration Inspectors in the Detroit metropolitan area. Although each claimant has varying periods of service with the INS, all of the claimants seek retroactive benefits for the period 1957-1977 because of their alleged improper classification as intermittent rather than part-time employees. In June of 1977 the claimants were granted prospective relief when the INS reclassified them as part-time employees. Since then the claimants have attempted to obtain backpay, additional hours of annual and sick leave, and increased pension benefits through INS grievance procedures, but on December 28, 1979, the Deputy Regional Commissioner of the INS denied plaintiffs relief after finding that the grievance examiner's recommendation was not acceptable. The claimants then submitted their claim to our Claims Group on April 4, 1980, and filed the above-referenced petition for relief with the Court of Claims on February 17, 1981. By letter dated February 24, 1981, our Claims Group found the existence of a conflict over the facts as set forth by the INS and the claimants. Since the facts could not be reconciled, the Claims Group followed its custom of accepting the facts as reported by the agency thereby proscribing any remedial action on its part. The claimants appealed our Claims Group denial of their claims by letter dated March 9, 1981, which resulted in our above-referenced letter dated June 10, 1981, refusing to consider the matter because of the pending Court of Claims' case.

Mr. Bird and his colleagues lost in their litigation of this matter before the Court of Claims. Charles W. Bird, et al. v. United States, previously cited. Aditionally, the claimants filed a motion for relief from the judgment of the Court of Claims on October 14, 1982, with the Court of Appeals for the Federal Circuit which was denied on December 17, 1982.

The General Accounting Office adheres to the doctrine of res judicata to the effect that the valid judgment of a court on a matter is a bar to a subsequent action on that same matter before the General Accounting Office. William C. Ragland, 62 Comp. Gen. 399 (1983). The Court of Claims in this same matter--involving the same events, parties, issue, and argument--decided that the claimants "* * * have not cited any statutory provision that provides a damages remedy for the alleged improper classification of immigration inspectors as intermittent employees

between 1957 and 1977. * * * 'There is no entitlement by statute to a monetary claim for failure to win a promotion, reclassification, or pay increase, absent violation of some statute or regulation mandating it * * *.'" Charles W. Bird, et al. v. United States, previously cited, at 3.

Therefore, since those claims have been considered and dismissed in court, the General Accounting Office will not consider them.

for Milton J. Socolar
Comptroller General
of the United States