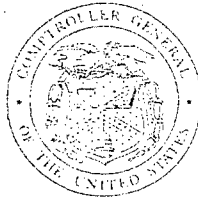


DECISION



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

PLM-I
B. Putnam
GPO 411
9157

FILE: B-193803

DATE: FEB 14 1979

MATTER OF: Indochinese Refugee Program Employees
Within-Grade Salary Increases FOR

DIGEST: Employees of the Indochinese Refugee Program, Social Security Administration, Department of Health, Education, and Welfare, appointed under civil service regulations to Schedule A excepted service positions under the General Schedule, for periods not to exceed September 30, 1981, are eligible for within-grade salary increases under 5 U.S.C. § 5335 (1976) on the same basis as term employees. See B-191861, October 20, 1978, 58 Comp. Gen. ____.

This action arises from a request by Mr. Thomas S. McFee, Assistant Secretary for Personnel Administration, Office of the Secretary, Department of Health, Education, and Welfare, for a determination as to whether certain employees appointed to the staff of the Indochinese Refugee Program in the Office of Family Assistance, Social Security Administration, are eligible for within-grade salary increases under the provisions of 5 U.S.C. § 5335 (1976).

Under the provisions of the Indochina Migration and Refugee Assistance Act of 1975, Public Law 94-23, May 23, 1975, 89 Stat. 87, as amended by title II of Public Law 95-145, October 28, 1977, 91 Stat. 1223, a staff of employees for the Indochinese Refugee Program has been established in the Office of Family Assistance, Social Security Administration. These employees are engaged in work activity directly related to the refugee resettlement effort for refugees from Cambodia, Vietnam, and Laos. By 5 C.F.R. § 213.3116(d)(5) the United States Civil Service Commission (CSC) has authorized the appointment of a limited number of employees to this staff. Service under such authority may not exceed September 30, 1981. The employees presently assigned to the staff are given Schedule A excepted service appointments that may not exceed the September 30, 1981, date.

Section 5335, title 5, United States Code, provides that an employee paid on an annual basis, and occupying a permanent position within the scope of the General Schedule, shall, following the completion of certain enumerated requirements,

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receive periodic step increases. The pertinent regulation of the CSC, 5 C.F.R. § 531.402(d), defines a permanent position as "one filled on a permanent basis, that is by an appointment not designated as temporary by law and not having a definite time limitation." Since the Indochinese Refugee Program staff positions have a definite time limitation not to exceed 3 years, 9 months, they are not permanent positions as defined in the cited regulation. However, 5 C.F.R. § 316.305 provides that term employees, appointed for a period of more than 1 but not more than 4 years as authorized by 5 C.F.R. § 316.301 and serving in a position subject to the General Schedule, are eligible for within-grade increases.

Our decision, B-191861, October 20, 1978, published at 58 Comp. Gen. ____, involved the question of granting within-grade salary increases to employees of the National Health Service Corps serving under excepted service appointments for not more than 4 years. We held that such employees were eligible for within-grade increases under 5 U.S.C. § 5335 on the same basis as term employees. The rationale of our decision was that the type of appointments and the basis for the time limitations applied to the Health Service employees were similar to those of hearing examiners who were held in B-164031, October 26, 1972, to be entitled to step increases.

In the instant case the same rationale would apply, i.e., authority for appointing Schedule A excepted service employees of the National Health Service Corps and the Indochinese Refugee Program emanates from 5 C.F.R. § 213.3116, the appointments of employees in both work areas are for not more than 4 years, and the need for such employees is for a limited period.

In view of the above, employees of the Indochinese Refugee Program are eligible for within-grade salary increases under the provisions of the controlling law and regulations.

Deputy

R. F. KELLER
Comptroller General
of the United States