

8099

J. Brown

DECISION



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

FILE: B-191861

DATE: October 20, 1978

MATTER OF: National Health Service Corps Civilian
Employees - Within-Grade Salary Increases

DIGEST: Pursuant to Public Law 94-484, health professionals are appointed in the National Health Service Corps for short-term employment in designated health manpower shortage areas. Such employees are given excepted appointments of not more than 4 years under civil service regulations. They are eligible for within-grade salary increases under 5 U.S.C. 5335 on same basis as term employees. See B-164031(4).50, October 26, 1972.

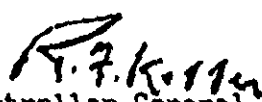
The Department of Health, Education and Welfare (HEW) through its Acting Assistant Secretary for Personnel Administration, has requested our opinion as to whether certain employees appointed to the National Health Service Corps are eligible for within-grade salary increases under 5 U.S.C. 5335 (1976).

The Health Professions Educational Assistance Act of 1976, Public Law 94-484, 90 Stat. 2243, established, within the Public Health Service, the National Health Service Corps consisting of certain regular and reserve officers of the Public Health Service, and other civilian personnel appointed by the Secretary of HEW. These civilian employees, which include nurses, medical social workers, speech and hearing specialists, and physicians, are given Schedule A excepted service appointments for periods not to exceed 4 years pursuant to 5 C.F.R. 213.3116(b)(10) (1978). The length of their appointment is based on the needs of the Public Health Service, the length of Government-supported training, and the matched interest of the individual and the host community.

Under 5 U.S.C. 5335 (1976) an employee paid on an annual basis and occupying a permanent position within the General Schedule is entitled to within-grade salary increases in pay. A "permanent position" is defined by 5 C.F.R. 531.402(d) (1978) as "one filled on a permanent basis, that is an appointment not designated as temporary by law, and not having a definite time limitation." Since positions in the National Health Service Corps are limited to no more than 4 years such positions are not considered "permanent" as defined in 5 C.F.R. 531.402(d). However, 5 C.F.R. 316.305 provides that term employees (those appointed under certain circumstances for a period of more than 1 year but not more than 4 years) are eligible for within-grade salary increases.

B-191861

In our decision B-164031, October 26, 1972, we held that hearing examiners appointed pursuant to the authority contained in the Supplemental Appropriation Act, 1972, Public Law 92-184, 85 Stat. 627, were eligible for within-grade salary increases. We based our holding on the fact that 5 C.F.R. 316.305 (1972) authorized within-grade salary increases for term employees appointed pursuant to 5 C.F.R. 316.301 (1972). Although the hearing examiners in question were appointed pursuant to Public Law 92-184 and not 5 C.F.R. 316.301, we held there was no reason to deny them within-grade increases since the type of appointment given and the basis for the time limitations applied were similar under both authorities. In both instances appointments were for not more than 4 years and the need for such employees was for a limited period. For similar reasons we believe that civilian employees of the National Health Service Corps appointed for not more than 4 years are eligible for within-grade salary increases during their period of appointment.


Deputy Comptroller General
of the United States