



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548



IN REPLY
REFER TO:

B-186008 (MRV)

OFFICE OF GENERAL COUNSEL

MAY 29 1979

10,314

Mr. Alvin S. Levy
4th Vice-President
AFGE, Local 1923, AFL-CIO
Social Security Administration
Room 1-J-21 Operations
6401 Security Boulevard
Baltimore, Maryland 21235

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CNC 02288

Dear Mr. Levy:

Further reference is made to your letter dated February 12, 1979, concerning the entitlement of Mrs. Gloria L. Emerson, a Social Security Administration employee, to salary retention incident to a change to a lower grade position (PN)

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On the basis of the information provided by you, we offer the following comments on the question presented in your letter. If, after studying this information, Mrs. Emerson believes she is entitled to salary retention, she may submit a claim through her agency to our Claims Division in accordance with the provisions of 31 U.S.C. § 71 and 5 C.F.R. Part 31.

Your letter states that Mrs. Emerson accepted a change to lower grade from the position of Claims Clerk, grade GS-5, step 1, to Claims Examiner, grade GS-4, step 3, effective December 3, 1978. Your letter states further that the union raised the question of her entitlement to salary retention based upon our decision in Faye Abu-Ghazaleh, 56 Comp. Gen. 199 (B-186008, December 22, 1976), but that the agency has refused to grant Mrs. Emerson salary retention in connection with her accepting a lower-graded, career-ladder position.

Under the provisions of 5 U.S.C. § 5337 (1976), an employee who was reduced in grade could, under certain conditions, retain his or her previous rate of pay for up to 2 years, if the reduction in grade was not at the employee's own request. See also 5 C.F.R. Part 531, subpart E (1978). However, one of the requirements for eligibility for salary retention under section 5337 was that the employee have served in a higher graded position 2 or more years immediately before the reduction in grade. See 5 U.S.C. § 5337(a)(4). We note that Mrs. Emerson was promoted to her grade GS-5 position effective July 2, 1978, and that her change to

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lower grade was effective December 3, 1978. Therefore, it appears that Mrs. Emerson was not eligible for consideration under the provisions of section 5337. See Ingrid A. McNair, B-189706, May 10, 1978 (copy enclosed).

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Your letter also questions whether the employing agency and the Civil Service Commission (CSC) (now Office of Personnel Management (OPM)) have correctly interpreted our decision in Faye Abu-Ghazaleh, supra, by concluding that these career-ladder positions were not part of an employee development program. We have reviewed the documents enclosed in your letter, including an opinion from the CSC and a copy of Federal Personnel Manual Letter 531-49, October 13, 1976. We are unable to agree with your contention that the employing agency and the CSC have incorrectly interpreted our decision. The opinion from the CSC states that "career-ladder" vacancies do not necessarily constitute an employee development program, and this appears consistent with a prior CSC opinion which formed the basis for our decision in Faye Abu-Ghazaleh, supra. Therefore, we believe that Mrs. Emerson's demotion would be considered to be at her request and thus not within the scope of the salary retention.

Finally, we point out that section 5337 of title 5, United States Code, was repealed with the passage of the Civil Service Reform Act of 1978, Pub. L. 95-454, October 13, 1978, 92 Stat. 1221. The repeal took effect the first applicable pay period after January 11, 1979, and would not affect Mrs. Emerson's entitlement. Under the provisions of section 801(a)(1) of the Reform Act (to be codified in 5 U.S.C. §§ 5361-5366), the Office of Personnel Management may prescribe circumstances under which pay retention would be warranted. See 5 U.S.C. § 5363(a)(3). The interim regulations issued by OPM and contained in Federal Personnel Manual Bulletin No. 536-1, March 30, 1979, provide for pay retention for an employee whose pay would otherwise be reduced:

"As a result of the placement of the employee in a formal employment development program generally utilized Government-wide: Upward Mobility, Apprenticeship, and Career Intern Programs; or as the result of placement in a position which the agency has determined is hard to fill * * *."
(§ 536.212(a)(3))

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The conditions under which pay retention will be allowed appear to remain the same under the new law except for the 2-year time-in-grade requirement which does not appear in OPM's interim regulations.

We trust that the above information is of assistance to you.

Sincerely yours,

MS
Michael R. Volpe
Attorney-Adviser

Enclosure