

6313



Johnnie Lupton
CivPers

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

DECISION

FILE: B-189706

DATE: May 10, 1978

MATTER OF: Ingrid A. McNair - Salary Retention

DIGEST: Employee was reduced in grade upon accepting new position with lower initial grade but higher potential grade than her present position. Employee complained that she should have been given her highest previous rate or salary retention because she lacked only about 1 month in being eligible for step 3 in her higher grade. Employee did not have 2 years continuous service in higher grade required for salary retention and agency was not required by law and regulations to award her the highest previous rate. Thus employee salary rate was properly set.

This action is in response to a request from Ms. Ingrid A. McNair, a Social Security Administration employee in the Kansas City Region, for a ruling on her entitlement to salary retention under the provisions of 5 U. S. C. § 5337. To assist us in ruling on the issue presented by the employee we obtained the views and comments of the Civil Service Commission and the Social Security Administration.

The record indicates that at the beginning of 1975, while Ms. McNair occupied the position of Social Insurance Claims Examiner, grade GS-8, step 2, \$12,028 per annum, she applied for another position with better advancement potential. This position, Social Insurance Representative, grade GS-105-5 or 7, was advertised under the Merit Promotion Plan and had a promotion potential of grade GS-10. Ms. McNair was selected for the Social Insurance Representative position and appointed at grade GS-7, step 4, \$11,573 per annum, effective February 16, 1975. Ms. McNair contends that her salary should have been set at a higher rate inasmuch as she would have received a periodic step increase to step 3, in March 1975, which would have made her grade GS-8 salary \$12,416. She believes this should have been taken into consideration when the appropriate step rate of grade GS-7 was computed.

Ms. McNair's entitlement to salary retention is governed by 5 U. S. C. § 5337, which provides in part as follows:

B-189706

"§ 5337. Pay saving

"(a) Subject to the limitation in subsection (b) of this section, an employee--

"(1) who is reduced in grade from a grade of the General Schedule;

"(2) who holds a career or career-conditional appointment in the competitive service, or an appointment of equivalent tenure in the excepted service or in the government of the District of Columbia;

"(3) whose reduction in grade is not (A) caused by a demotion for personal cause, (B) at his request, (C) effected in a reduction in force due to lack of funds or curtailment of work, or (D) with respect to a temporary promotion occurring after September 20, 1961, a condition of the temporary promotion to a higher grade;

"(4) who, for 2 continuous years immediately before the reduction in grade, served (A) in the same agency and (B) in a grade or grades higher than the grade to which demoted; and

"(5) whose work performance during the 2-year period is satisfactory or better;

is entitled to basic pay at the rate to which he was entitled immediately before the reduction in grade * * *." (Emphasis added.)

Pursuant to the above-quoted statute, an employee is only entitled to salary retention provided he satisfies certain criteria. One criterion is that the employee has served in the higher grade for the 2 continuous years immediately before the reduction in grade. Apparently this is a condition that Ms. McNair did not satisfy at the time of her reduction in grade since she held the grade GS-3 position


B-189706

from March 18, 1973, until February 15, 1975, a period of 1 year and 11 months. Hence she would not be entitled under the statute to salary retention.

It could also be argued that the reduction in grade was at the employee's own request so as to exclude her from the provisions of the above-quoted statute. See Matter of Faye Abu-Ghazaleh - Salary Retention, 58 Comp. Gen. 199 (1975). However, we have no need to decide this question inasmuch as she was excluded from coverage of the statute by her failure to meet the 2-year time-in-the-higher-grade requirement.

Accordingly, under the provisions of 5 C.F.R. § 531.203(c) governing appointment changes, agencies have discretionary authority to fix the salary rate of a demoted employee " * * * at any rate of his grade which does not exceed his highest previous rate * * *." Thus, under the law and regulations, the Social Security Administration had discretion in fixing Ms. McNair's step rate within grade GS-7 at a step that did not exceed her highest previous rate of \$12,028 per annum.

Upon review of the record and after considering the views and opinions of the Civil Service Commission and the Social Security Administration, we are unable to find anything improper or illegal in the agency's action of setting Ms. McNair's pay rate at step 4 of grade GS-7.


Deputy Comptroller General
of the United States