



United States Department of the Interior

OFFICE OF THE SECRETARY
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PERSONNEL BULLETIN NO. 04-04

SUBJECT: Departmental Policy on Non-Payment of Interest on Retroactive Law Enforcement Officer Enhanced Pay Determinations

BACKGROUND

Department of the Interior (DOI) employees whose positions meet the definition of "Law Enforcement Officer" as defined in 5 U.S.C., sections 8331(20) or 8401(17) are covered by special law enforcement retirement and enhanced pay provisions as authorized by 5 U.S.C., section 5303, the Pay Reform Act. If an employee, whose current or any previously-held position has not been determined to meet this definition, believes that the position in question should be covered, that employee may file a claim with DOI through the Firefighter and Law Enforcement Retirement Team (FLERT).

When FLERT determines that the position in question is in fact covered by the special law enforcement retirement and enhanced pay provisions, the appropriate bureau officials are notified, and the employee's retirement and enhanced pay are adjusted retroactively, if necessary. This policy addresses whether such employees are entitled to interest on their retroactive retirement and enhanced pay.

DEPARTMENTAL POLICY

It is DOI policy that interest will not be paid in the instances cited above because these retroactive enhanced payments do not constitute back pay under 5 U.S.C. 5596, the Back Pay Act (Act). The Act states in part that an employee who has been affected by an *unjustified or unwarranted personnel action* which has resulted in the *withdrawal or reduction* of all or part of the pay, allowances, or differentials to which the employee otherwise would have received, is entitled to interest on the back pay.

However, the Act does not apply to the situation described above. The retroactive law enforcement enhanced pay an employee may receive under the conditions explained above was not based on an unjustified or unwarranted personnel action that resulted in the withdrawal or reduction of any pay entitlement.

A precedent court decision in a similar case exists. In Bradley v. the United States of America, 42 Fed. Cl. 333, 337-38 (1998), plaintiffs alleged, pursuant to the Back Pay Act, that they were entitled to interest along with the retroactive Law Enforcement Availability Pay (LEAP) that the agency had already granted. The Court ruled that the plaintiffs were not entitled to interest because their claims were not based on an alleged unjustified or unwarranted personnel action resulting in the withdrawal or reduction in

pay contemplated by the Back Pay Act. In other words, the plaintiffs had not experienced a withdrawal or reduction in their pay entitlement. Rather, they were awarded retroactive LEAP under another statute other than the Act. Consequently, the Act furnished no basis for their claims of interest. The same principle is applicable to retroactive enhanced pay received by Law Enforcement Officers under the Pay Reform Act.

Questions concerning this Personnel Bulletin should be addressed to the respective bureau human resources office or to Winford Hooker, DOI Office of Personnel Policy, at 202-208-7949 or by E-mail winford_hooker@ios.doi.gov.



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