



Office of the General Counsel

B-254997

May 16, 1994

Ms.

Dear Ms. :

This responds to your letters of August 4 and November 29, 1993, seeking reconsideration of our Claims Group's settlement 2-2868398, July 22, 1993, which sustained the Department of Treasury's action in setting your pay upon your promotion in May 1990. The agency determined that its policy was not to apply the highest previous rate rule in setting your pay upon your permanent promotion from GM-13 to GM-14 in May 1990. You indicate that agency officials had advised you that you would receive the higher pay rate you had been receiving under a temporary promotion to GM-14 which ended in March 1990.

Your appeal presents nothing to change the conclusion in the Claims Group's settlement that the agency properly set your pay in accord with its policy of not using earnings under temporary promotion as the "highest previous rate" for internal actions such as promotions.

As the Claims Group's settlement indicates, under the applicable regulations the agency has the discretion to set pay upon a promotion at a rate higher than the rate otherwise applicable, not to exceed the employee's highest previous rate. As noted, your agency advises that their policy precluded use of earnings in a temporary promotion as a "highest previous rate." Thus, after you were returned to your permanent GM-13 position in March 1990, then permanently promoted to GM-14 in May, you received your proper 6 percent increase over that GM-13 level, but not the higher GM-14 pay you had been receiving under the temporary promotion. Although we can understand your disappointment in not receiving the higher pay, the agency's action was within its authority. See in this regard our decision , B-189567, Nov. 21, 1977, copy enclosed, involving a similar situation.

While your supervisor and the agency's Director of Personnel apparently incorrectly advised you of the pay rate you could expect upon your permanent promotion, that does not provide

a basis for us to allow you the higher rate. Payments of salary from appropriated funds are limited to those authorized by statute and regulation, and even erroneous advice or information provided by a government employee cannot estop the government from denying benefits not otherwise permitted by law or regulation. Office of Personnel Management v. Richmond, 496 U.S. 414 (1990), and cases cited therein; , 64 Comp. Gen. 472 (1985). Accordingly, we must sustain the denial of your claim.

Sincerely yours,

Robert P. Murphy

Robert P. Murphy
Acting General Counsel

Enclosure

B-254997

May 16, 1994

DIGEST

An employee who had received two PMRS merit increases and two annual pay adjustments in a temporary promotion was returned to her permanent lower graded position and salary from which she was later permanently promoted to the higher grade. Upon the permanent promotion she received an appropriate pay increase, but not the level she had received under the temporary promotion. Her pay was correctly set because the agency had a policy of not using earnings under a temporary promotion as the "highest previous rate" for such promotions, which is a matter within the agency's discretion.