GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-270139

November 9, 1995

The Honorable Ronald D. Coleman
Member, United States
House of Representatives
Federal Building, Suite 723
700 East San Antonio Street
El Paso, TX 79901

Dear Mr. Coleman:

This responds to your July 27, 1995, letter, with enclosures, on behalf of Mr. Richard E. Montgomery, who is a former Department of Defense civilian employee. Mr. Montgomery disputes the Office of Personnel Management's (OPM) determination that he is not eligible to enroll in the Retired Federal Employees Health Benefits Program. Since OPM has the statutory authority to administer this program, we may not disturb OPM's determination. 5 U.S.C. § 8913. See Kenneth J. Emanuel, Esq., B-251775, Apr. 29, 1993; B-247499, Mar. 18, 1992; Lee R. McClure, 63 Comp. Gen. 546 (1984). However, the following information is provided for your assistance.

According to the material you provided, the Department involuntarily separated Mr. Montgomery from the federal service (the Department of the Army) on September 30, 1993, after 10 years, 7 months and 7 days of federal employment. At that time, he elected to continue his Federal Employees Health Benefit Plan coverage under a provision that allows any employee separated from the federal service to continue coverage for a period not to exceed 18 months. See 5 U.S.C. § 8905a (1988). Employees who elect this coverage must pay both the employee and the agency portions of the insurance premiums, which Mr. Montgomery did. 5 U.S.C. § 8905a(d)(1)(A).

Subsequently, in June 1994, Mr. Montgomery turned 62 and became eligible to receive a deferred annuity. He then tried to convert this temporary coverage into permanent coverage under the Retired Federal Employees Health Benefits Program. However, OPM denied his request. Mr. Montgomery then requested reconsideration

of that decision and, upon review, OPM affirmed its decision. The basis for this determination, according to the information provided to Mr. Montgomery by OPM, is that under 5 U.S.C. § 8905(b), only employees who are eligible for an immediate annuity at the time of their separation are eligible to convert their health insurance coverage to the retirement plan, and Mr. Montgomery did not have enough years of service to qualify for an immediate annuity upon his separation.

Before his separation, an employee from the employee benefits section of the Army wrote Mr. Montgomery a note stating that if he elected to continue his coverage under the provision just described until he was eligible for his annuity, he then would be able to convert this temporary coverage to permanent coverage under the retired employee's plan. For the reasons stated above, this proved to be erroneous advice.[1]

We trust this is responsive to your inquiry.

/s/Seymour Efros
for Robert P. Murphy
General Counsel

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[1]Based on this erroneous advice, Mr. Montgomery states that he declined the opportunity to accept a separation incentive to voluntarily separate and instead, waited to be involuntarily separated through a reduction-in-force (RIF). However, he did not lose any money as a result of this error because he should have received the same amount of severance pay as a result of the RIF that he would have received as a separation incentive, which is 1 week's pay for each year of service for the first 10 years and 2 weeks pay for each year thereafter. Compare, 5 U.S.C. § 5595 (severance pay) and 5 U.S.C. § 5597 (separation incentives for Department of Defense employees).

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DIGEST

Through his United States Representative, a former Department of Defense civilian employee requests our review of a determination by the Office of Personnel Management (OPM) that he is not eligible to enroll in the Retired Federal Employees Health Benefits Program. In a letter response, the Representative is advised that, because OPM has the statutory authority to administer the health benefits program, this Office will not disturb its determination.