

L-CP



DECISION

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

FILE: B-202540

DATE: May 11, 1981

MATTER OF: [REDACTED]

DIGEST: Wage grade employee claims entitlement to a higher rate of environment differential pay asserting that the conditions in the battery shop where he works as a repairer were such as to significantly increase the hazard he was exposed to. Authority to determine the level of hazard for differential pay purposes is primarily vested in agency concerned. GAO will not substitute its judgment for agency's in absence of clear and convincing evidence that their determination was arbitrary and capricious. Since such evidence was not shown, the claim may not be allowed.

This action is in response to a letter dated February 26, 1981, with enclosures, from [REDACTED], a wage grade employee of the United States Air Force, requesting further consideration of his claim for additional environmental differential pay for the period August 7, 1976, to January 7, 1980.

[REDACTED] claim was the subject of a settlement dated January 21, 1981, by our Claims Group, which disallowed the claim. The disallowance upheld the agency's determination that [REDACTED] was not entitled to the additional pay. Under the regulations the primary authority to determine entitlement is in the agency concerned, and there was no showing of clear and convincing evidence that their determination was in error.

[REDACTED] was employed as a battery repairer at Langley Air Force Base, Virginia, during the period in question. He asserts his claim for additional environmental differential pay on the general conditions which reportedly existed in the battery shop at the base. He contends, in effect, that the conditions were such as to increase significantly the hazardous conditions that normally are part of the work involved. It is asserted that the agency did not provide the necessary protective devices or take the necessary safety precautions in the operation of the shop. As a result, [REDACTED] contends

B-202540

that the conditions should require the payment of an 8 percent environmental differential rather than the 4 percent authorized and paid.

Pursuant to subchapter IV, chapter 53, Title 5 of the United States Code, the Federal Personnel Manual Supplement 532-1~~x~~ (May 31, 1978), subchapter S8-7~~x~~ authorizes an agency to pay environmental differentials specified in Appendix J to a wage grade employee when he performs assigned duties involving the conditions listed in that Appendix. However, subchapter S8-7g(2)~~x~~ of those regulations requires each agency to evaluate its own activities against the guidelines in Appendix J to determine whether the local situation is covered by the defined categories. Thus, the authority and responsibility to determine whether the assigned duties of an employee involved situations for which an environmental differential is authorized to be paid is vested primarily in the agency concerned. Matter of [REDACTED], B-197142, February 12, 1980.

In the absence of clear and convincing evidence negating the agency finding, or which shows that the agency determination was arbitrary and capricious, we will not substitute our judgment for that of agency officials who are in a better position to determine these matters. Matter of National Association of Government Employees, B-181498, January 30, 1975; Matter of [REDACTED], B-197885, December 30, 1980.

In this case the administrative officials determined that the degree of hazard present was sufficient to warrant the payment of an environmental differential at the 4 percent rate. [REDACTED], contends that the rate should be at 8 percent based on his view of conditions during the period in question.

As we understand the guidelines, the differential percentage rates listed in Appendix J are predicated on what is considered the appropriate hazard level normally associated with the type of employment involved. The record shows that the Air Force evaluated the hazardous conditions present at [REDACTED] work place and found that they fit the criteria for the 4 percent rate. We have reviewed the record, including the material submitted by [REDACTED],

B-202540

and we do not find that the Air Force was arbitrary or capricious in making its determination.

Accordingly, the action taken to disallow [REDACTED] claim is sustained.

Harry R. Van Cleave
Acting Comptroller General
of the United States