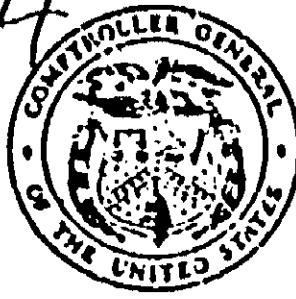


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**DECISION**



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

**FILE:** B-204593

**DATE:** February 19, 1982

**MATTER OF:** Anthony J. Vaccarino - Within-Grade  
Increase - Nonpay Status in Excess of  
52 Calendar Weeks

**DIGEST:**

Employee sustained a disabling injury as the result of a household accident. He had served approximately 20 months at the GS-14, step 4, grade level and under normal circumstances, would have been eligible to receive a within-grade increase to step 5 on October 22, 1978, after a waiting period of 104 calendar weeks. At his request, he was granted leave without pay (LWOP) and placed in a nonpay status from July 11, 1978, to August 7, 1979. The approximate 20 months of service prior to the period the employee was in a nonpay status, a period in excess of 52 calendar weeks, does not constitute creditable service for purposes of eligibility to receive a within-grade increase and a new waiting period is required to begin effective August 8, 1979. 5 C.F.R. §§ 531.403(b)(2) and 531.405(b).

This decision is in response to a request by Mr. D. E. Cox, authorized certifying officer, Federal Bureau of Investigation (FBI), United States Department of Justice, as to whether a waiver may be granted from section 531.403, title 5, Code of Federal Regulations, which states that a new waiting period for a within-grade increase begins after a break in service or nonpay status in excess of 52 calendar weeks.

The issue arises at the request of Mr. Anthony J. Vaccarino, an employee of the FBI, who sustained a disabling injury as the result of a household accident. He was granted leave without pay (LWOP) and placed in a nonpay status, at his own request, from July 11, 1978, to August 7, 1979, a period in excess of 52 calendar weeks. Prior to being placed in the LWOP status, Mr. Vaccarino had been promoted to GS-14, step 4, effective October 24, 1976, and had served 20 months in step 4. If he had not been placed in a nonpay status, he would have been eligible to receive a within-grade increase

to GS-14, step 5, on October 22, 1978, after having performed creditable service at the step 4 level for a waiting period of 104 calendar weeks. 5 U.S.C. § 5335 (1976).

After returning to work on August 8, 1979, Mr. Vaccarino was advised that, in accordance with 5 C.F.R. § 531.403(b)(2), a new waiting period for his step increase began after he was in a nonpay status in excess of 52 calendar weeks. Accordingly, the beginning date of the waiting period was reestablished as August 8, 1979, with eligibility for a within-grade increase postponed until August 9, 1981.

Mr. Vaccarino contends that the reestablishment of a new waiting period for his eligibility to receive a within-grade increase has penalized him and unjustly disregarded the approximately 20 months of creditable service he had performed prior to being placed in LWOP status. He requests that he be credited with the approximate 20 months of creditable service he had performed and that he be granted his within-grade increase on a date approximately 4 months after the date he returned to duty on August 8, 1979.

The authority for the granting of within-grade increases is contained in 5 U.S.C. § 5335 (1976) and the implementing regulations, 5 C.F.R. Part 531, Subpart D (1978). In accordance with these provisions, employees must complete certain waiting periods for advancement between steps consisting of 52, 104, or 156 calendar weeks of creditable service. See 5 C.F.R. § 531.403. The 104 calendar-week waiting period is applicable here. However, when an employee is placed in a nonpay status for a period in excess of 52 calendar weeks, section 531.403 provides that a new waiting period begins. Further, service performed prior to a single nonpay period when the nonpay period exceeds 52 calendar weeks, and any part of the nonpay period of more than 52 calendar weeks, are not creditable service. 5 C.F.R. § 531.405(b). Also, the period of time spent in a nonpay status for more than 2, 4, or 6 workweeks (4 workweeks here) does not constitute creditable service in the computation of a waiting period, except in circumstances involving a work-related injury under subchapter I of Chapter 81, title 5, United States Code, 1976, service

during a national emergency, or an assignment to a State or local government or other institution under 5 U.S.C. §§ 3371-3376 (1976). 5 C.F.R. § 531.404; John L. Swigert, B-191713, May 22, 1978.

Therefore, since Mr. Vaccarino's leave of absence was in excess of 52 calendar weeks, the approximate 20 months of service he performed prior to such absence does not constitute creditable service. Finally, Mr. Vaccarino's leave without pay for more than 52 weeks does not come within any of the enumerated exceptions, and consequently, the period during which he was in a nonpay status from his position with the FBI may not be counted as creditable service for purposes of eligibility to receive a within-grade increase and a new waiting period is required to begin. This Office has no authority to waive the specific statutory and regulatory provisions applicable to this case.

Accordingly, the action of the FBI in reestablishing Mr. Vaccarino's waiting period to begin on August 8, 1979, for purposes of a within-grade increase to GS-14, step 5, was proper, and we find no basis upon which the provisions of 5 C.F.R. §§ 531.403 and 531.405 may be waived in his case.

*Milton J. Rowland*  
for Comptroller General  
of the United States