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Attorney General



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Office of the Attorney General

August 11, 2008

LEGAL MEMORANDUM

Ref: CQA 08-0415

TO: Acting Director, Customs & Quarantine Agency, Guam

FROM: Attorney General *ASE*

SUBJECT: Retirement Credit for Military Service

A lieutenant employed by Customs & Quarantine recently applied for retirement from the government of Guam but was refused retirement credit for time spent in the United States military. In a memorandum of April 29, 2008, you inquired about his status. We conclude that he can and should be allowed to retire and given the service credit he claims.

This employee has been working for the government of Guam from 1982 to the present, but previously served in the military from 1977 to 1982. Guam law gives him credit for these five years towards his government retirement if he pays to the Retirement Fund the amount he would have paid had he worked those five years for GovGuam. 4 G.C.A. §8108. The government will match his contribution. Customs & Quarantine is willing to pay and has identified the funding, in the amount of \$6,670.09, that it must provide. Government agencies usually pay this kind of obligation from personnel funds.

There is no statute or rule that limits the time within which an employee may apply for the credit. Thus, GovGuam has traditionally permitted an employee to claim this "military service credit" at any time during his GovGuam employment. In other words, he may claim it at the beginning, middle or end of his tenure.

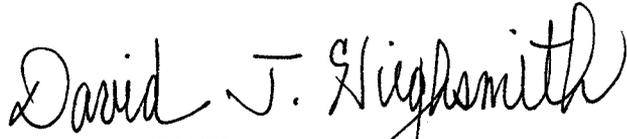
When the lieutenant applied for both retirement and for the credit, however, BBMR refused, citing a provision in the FY 2008 Budget Act, P.L. 29-19, that prohibits using FY 2008 appropriations for obligations incurred in previous fiscal years. BBMR believes that FY 2008 personnel funds cannot be used to pay a military service credit for service rendered between 1977 to 1982. We disagree.

The BBMR wrongly assumes that the government's obligation to pay its contribution was incurred between 1977 and 1982. In fact, the obligation was incurred in 2006, when the lieutenant first applied for it. It was re-incurred on December 14, 2007 when the lieutenant

renewed his application and the Retirement Fund sent an invoice in the appropriate amount to BBMR and Customs.

Since there is no time limit as to when he may apply, the employee was entitled to apply during December 2007. Since he applied during FY 2008, this is a FY 2008 obligation. No obligation was incurred until he applied. Thus, the lieutenant's service credit can be paid from FY 2008 funds. See Limtiaco v. Guam Fire Department, et al., 2007 Guam 10.

We trust that this answers your question.


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cc: Retirement Fund
Bureau of Budget Management Research