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OGC Has Reviewed

OGC 77-4712

22 July 1977

MEMORANDUM FOR: Executive Assistant to the Director of Personnel

STATINTL

FROM

[REDACTED]
Office of General Counsel

SUBJECT : "Base Paper" on 120-Day Detailees

1. In response to your memorandum dated 20 July 1977 concerning a standardized response to claimants such as [REDACTED] I hope these comments will be helpful.

STATINTL

2. If there is some way to eliminate the word "illegal" from Reference (a), I think it would be advisable. A quick glance at the first page of the draft response could give someone the wrong impression. Apart from that, the letter is an accurate statement of the law on the subject.

3. The attachment to the letter might benefit from some sort of heading, and I would suggest that the second sentence of the second paragraph of the attachment ("While the...") be omitted. That sentence covers a rather sensitive "sore spot" in our Headquarters Regulations, and it would not be desirable to cite it in our own defense. Although that regulation is valuable in a legal analysis of the problem, to cite it in a formal denial of an employee claim may be to invite disaster, since that regulation may be construed to argue against our position.

4. The third sentence in paragraph 3 of the attachment ("The Comptroller General...") could also be omitted, not because it is in error, but only because it is very outdated and slightly confusing. More recent and relevant language can be found in Civil Service Commission Bulletin No. 300-40 (25 May 1977), wherein the Civil Service Commission describes the scope of the Comptroller General's recent decision. That language limits the effect of the decision to the competitive service.

Scope of Commission Instruction. The Commission's instruction for securing prior approval for continuation of detailees beyond 120 days relates only to detailees within the same agency of employees serving in competitive positions and, in the excepted service, positions under the general schedule. Since the GAO

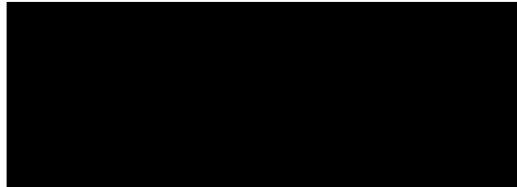
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decision follows the Commission's instruction it would not apply to positions beyond that scope.... Id. at 4. (Emphasis added)

When you have decided upon a final draft of the response for future claimants, please advise me so that this Office will have the opportunity to concur.



STATINTL

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

ORC 77-4649
7-20-77

FROM: Executive Assistant to the
Director of Personnel

EXTENSION NO.

DATE 20 JUL 1977

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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NO.	TO:	DATE		OFFICER'S INITIALS
		RECEIVED	FORWARDED	
1.	Office of General Counsel	7-20-77	7-25-77	
2.				
3.				
4.				
5.				
6.				
7.	Executive Asst - D/Pers 5 E 58 HQ	26 JUL 1977		K
8.	C/Review Staff			B
9.				
10.				
11.				
12.				
13.				
14.				
15.				

This is going to become a base paper so to speak in responding to inquiries that meet the issues raised in Mr. [redacted] memorandum. We want to ensure that this has your agreement and is in accord with your recent opinion.



(See attached memorandum)