



United States
Office of
Personnel Management

Washington, D.C. 20415 0001

Nov 20 1991

In Reply Refer To

Your Reference

Renar W. Griner
Chief, Technical Services Branch
Department of the Army
U.S. Total Army Personnel Command
Alexandria, VA 22332-0341

L: 912460402

Dear Mr. Griner:

This is in response to your request for a determination of general coverage under 5 U.S.C. 8336(c) for the positions with the U.S. Army Health Services Command listed in your letter dated August 23, 1991.

Section 8336(c) provides for retirement at age 50 of an employee who has completed 20 years of service as a law enforcement officer or firefighter. A law enforcement officer, for purposes of section 8336(c), is defined by section 8331(20) as:

(20) "Law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. (See 5 U.S.C. 8331(20)). The definition does not include an employee whose primary duties involve maintaining law and order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than persons who are suspected or convicted of offenses against the criminal laws of the United States.

The enclosed form RI 30-43 contains regulations of the Office of Personnel Management (OPM) to supplement 5 U.S.C. 8336(c), which establishes special retirement eligibility for law enforcement officers and firefighters employed under the Civil Service Retirement System.

We have approved general coverage for the following position(s) in the primary category.

<u>Position Title</u> <u>(Org. Title)</u>	<u>Series/</u> <u>Grade</u>	<u>PD#</u>
Criminal Investigator	GS-1811-11	JMS0010

COMMENTS:

This coverage applies only to employees covered by the Civil Service Retirement System (CSRS). Although a position is covered under CSRS, it is not necessarily covered under the Federal Employees Retirement System (FERS). The agency head is authorized to make determinations regarding

whether positions under FEPS qualify as law enforcement officer or firefighter positions.

Based on OPM's review of the position descriptions, we find that we do not concur with your determination that the following positions meet the criteria established for coverage in the primary category.

<u>Position Title</u> <u>(Org. Title)</u>	<u>Series/</u> <u>Grade</u>	<u>PD#</u>
Police Officer	GS-083-4	JNS0050
Police Officer	GS-083-5	JNS0060

Based on OPM's review of the position descriptions, we find that we do not concur with your determination that the following positions meet the criteria established for coverage in the secondary category.

<u>Position Title</u> <u>(Org. Title)</u>	<u>Series/</u> <u>Grade</u>	<u>PD#</u>
Lead Police Officer	GS-083-6	JNS0030
Lead Police Officer	GS-083-7	JNS0170
Supervisory Police Officer	GS-083-8	JNS0160
Supervisory Police Officer	GS-083-9	JNS0040

"Primary duties" are those duties of a position which-

- (a) Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position;
- (b) Occupy a substantial portion of the individual's working time over a typical work cycle; and
- (c) Are assigned on a regular and recurring basis. Duties that are of an emergency, incidental, or temporary nature cannot be considered "primary" even if they meet the substantial portion of time criterion.

"Primary position" means a position whose primary duties are investigating, apprehending, or detaining individuals suspected or convicted of offenses against the criminal laws of the United States.

"Secondary position" means a position that (a) is clearly in the law enforcement field; (b) is in organization having a law enforcement mission; and (c) is either-

(1) Supervisory; i.e., a position whose primary duties are as a first-level supervisor of law enforcement officers in primary position; or

(2) Administrative; i.e., an executive, managerial, technical, semiprofessional, or professional position for which experience in a primary law enforcement position, or equivalent experience outside the Federal government, is a mandatory prerequisite.

We are aware that certain Federal employees, such as policemen, are involved in law enforcement work. The Police Series GS-093, includes positions that involve performing or supervising law enforcement work in the protection of life, property, and the civil rights of individual citizens. These employees enforce Federal, State, County, and Municipal statutes, laws and ordinances, and agency rules and regulations pertaining to law enforcement work. They preserve the peace, prevent, detect, and investigate accidents and crimes, arrest violators, and provide aid and comfort to citizens in emergency situations. While the duties of the policeman involve certain hazards not present in many other types of Federal employment, we believe it is clear that the primary duties of the policeman are not the investigations, apprehension, or detention of individuals suspected or convicted of offenses against the criminal law of the United States.

We find that these position do not meet the criteria for coverage in the primary/secondary categories. The purpose of these positions is to provide protective duties. It is apparent the primary duties and experience required involve providing security and protection of life and property.

Pursuant to §831.909, Code of Federal Regulations, effective January 19, 1988, you (the agency) are responsible for notifying each employee whose rights or interests are affected by the decision, that the decision may be individually reconsidered by OPM in accordance with §831.109. A request for reconsideration must follow the procedures in §831.908. Notification to the employee should be accomplished within 30 days of your receipt of this decision, must be duly dated, and a copy must be entered as a permanent record in the employee's official personnel file. The time limit for requesting reconsideration is 30 days from the date of your notification to the affected employee. Please note that the request must be received in OPM within 30 calendar days of the date

of your notification. The request must be in writing, must include the employee's full name, address, claim number and signature, and must state the basis for the request.

If the employee plans to submit additional evidence, but it is unavailable to be sent with his timely request for reconsideration, he should not delay his request. In such case, he should just include a statement that additional evidence will be submitted at a later date.

If requesting reconsideration, the employee should provide information that is accurate and factual. Any intentional false statement or willful misrepresentation relative to an application for benefits is a violation of the law punishable by a fine of not more than \$10,000 or imprisonment of not more than 5 years, or both. (18 U.S.C. 1001).

His request for reconsideration must be addressed to:

Reconsideration Branch
U.S. Office of Personnel Management
Employee Service & Records Center
P.O. Box 45
Boyers, PA 16020

If the employee's request for reconsideration is not received by OPM within the 30 day time limit, we will dismiss his request as not timely filed unless he can show he was unaware of the time limit, not notified of the time limit, or that he was prevented from responding by circumstances beyond his control.

We found that there was an additional position description submitted, which was not listed in your letter. We are not making a determination of coverage at this time for this position.

<u>Position Title</u> (<u>Org. Title</u>)	<u>Series/</u> <u>Grade</u>	<u>FD#</u>
Provost Marshal	GS-301-12	S0120