



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-234602

July 5, 1989

The Honorable Walter E. Fauntroy
House of Representatives

Dear Mr. Fauntroy:

This is in response to your letter of February 7, 1989, concerning the claim of Mr. [redacted], a former employee of the Department of the Treasury. Mr. [redacted] claims that he is entitled to a retroactive temporary promotion with backpay because he performed the duties of a higher grade position for more than 120 days.

Mr. [redacted] was employed at the Bureau of the Public Debt as a correspondence clerk, grade GS-4, from September 1985 until June 1988. During the period October 12, 1986, to February 26, 1988, he was assigned the duties of a grade GS-5 correspondence prescreening clerk. The Bureau, for reasons not explained in the record, retroactively granted Mr. [redacted] a temporary promotion for the period October 12, 1986, to February 8, 1987. It denied Mr. [redacted] claim for a retroactive promotion for the period February 9, 1987, to February 26, 1988.

Mr. [redacted] claim for a retroactive temporary promotion and backpay may not be allowed. The general rule is that an employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties performed. See United States v. Testan, 424 U.S. 392 (1976). When an employee performs the duties of a higher grade level, no entitlement to the salary of the higher grade exists until such time as the individual is actually promoted. See [redacted], B-200638, Oct. 9, 1981, and cases cited therein.

Furthermore, the Court of Claims has held that neither the statute governing details (5 U.S.C. § 3341) nor guidance in the Federal Personnel Manual requires the payment of backpay to employees detailed to higher grade positions for more than 120 days. Wilson v. United States, 229 Ct. Cl. 510 (1981). In [redacted], 61 Comp. Gen. 408 (1982), we held that we would follow the Wilson decision with

respect to all pending and future claims. See _____, B-229086, May 25, 1988; _____ B-219470, Nov. 8, 1985. Although an agency, by regulation or collective-bargaining agreement, may establish a policy under which it becomes mandatory to promote employees detailed to higher grade positions in certain circumstances, there is no evidence of such an agency regulation or agreement in this case. See, e.g., _____, 61 Comp. Gen. 492 (1982).

Therefore, Mr. _____ claim for a retroactive temporary promotion and backpay must be denied. We have enclosed copies of the decisions cited above, with the hope that this information will assist you in responding to Mr. _____ inquiry.

Sincerely yours,


James F. Hinchman
General Counsel

Enclosures