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UNITED STATES GOVERNMENT  
WASHINGTON, D.C. 20540

DATE  
1980 JUN 23  
IN REPLY  
REFER TO: S-196227

JUL 23 1980

Mr. Darryl E. Laxo  
275 San Carlos Way  
Novato, California 94947

Dear Mr. Laxo:

~~is not available to public reading~~

This responds to your letter of June 10, 1980, concerning our decision Matter of Darryl E. Laxo, S-196227, May 15, 1980. Since you have not presented any new evidence or facts, there are no grounds upon which to reconsider that decision.

In your letter you inquire why you were not given a retroactive temporary promotion to grade GS-12 between November 2, 1972, and November 23, 1973. On November 3, 1972, when you were assigned the duties of Coordinator for Deep Submergence Vehicles, that position was classified as a Naval Architect, GS-871-13. Since you were not eligible for appointment as a Naval Architect, you were not eligible for promotion to the position when it was classified as a Naval Architect, GS-13. Thus, you were not eligible to be temporarily promoted to that position or to be paid at either the GS-12 or the GS-13 level. Based on the Navy's action reclassifying the position to that of General Engineer, GS-12, a position to which you were eligible to be promoted, the retroactive temporary promotion granted to you by the Claims Division under the authority of our Turner-Caldwell decisions for the period beginning the 121st day after the date of reclassification was proper.

Regarding the classification of the position of Coordinator for Deep Submergence Vehicles, the general rule is that an employee of the Federal Government is only entitled to the salary of the position to which he is appointed regardless of the duties he performs. Our Turner-Caldwell decisions provide a limited exception to that rule. However, as we stated earlier, unless an employee is eligible for permanent promotion to a position, he is not entitled to a retroactive temporary promotion to the position due to an extended detail. Since you were not qualified for promotion to the position while it was classified as Naval Architect, there was no authority to grant a retroactive temporary promotion at that time.



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Contrary to your suggestion that the decision is consistent with your view that the position should have been classified at GS-12 throughout the period covered by your claim, the decision does not express an opinion regarding the propriety of the position classification since, for the periods involved, this was a matter within the jurisdiction of the Civil Service Commission and the agency involved. Moreover, the Supreme Court held in United States v. Testan, 424 U.S. 392 (1976), that there is no authority to pay backpay for a period of wrongful classification.

• Sincerely yours,

Edwin J. Monsma

Edwin J. Monsma  
Assistant General Counsel