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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

JAN 29 1980

In Reply
Refer to: B-197320 (JAB)

not available to public

Mr. John O. Johnson
4829 Jela Way
North Highlands, California 95660

Dear Mr. Johnson:

This is in response to your letter of December 20, 1979, with which you forwarded correspondence you claim indicates discrimination and unfairness in employment within the Mid-Pacific Region of the Water and Power Resources Service, Department of Interior. You asked that we retain this file in the event that our assistance is required to render a fair decision.

Included with the documents you forwarded to us is a letter dated December 19, 1979, from you to the Chief, Division of Personnel and Management, Water and Power Resources Service which you characterized as a classification appeal. The unfair employment practices which you describe in that letter relate to the classification of your position since you allege that you perform more duties but have a lower grade than other employees in the region holding similar jobs.

Under the Classification Act of 1949, codified in 5 U.S.C. 101 et seq. (1970) and the implementing regulations found in Part 511 of title 5 of the Code of Federal Regulations, an employee's agency and the Office of Personnel Management (formerly the Civil Service Commission) are primarily responsible for the classification of the duties of an employee's position. As correctly stated in the November 15, 1979, letter from the Acting Chief, Division of Personnel and Management, an employee may appeal classification actions either to his agency or directly to the Office of Personnel Management.

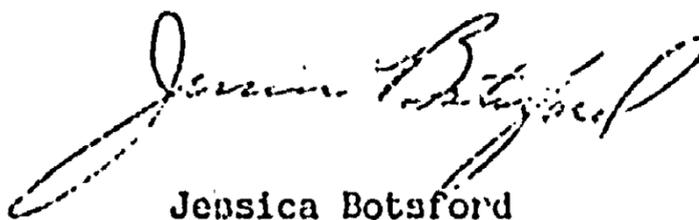
The General Accounting Office does not have jurisdiction concerning classification appeals. Although this Office might become



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involved if backpay became an issue, it seems unlikely that would arise in light of United States v. Testan, 42 U.S. 392 (1976). There the Supreme Court held that neither the Back Pay Act, 5 U.S.C. 5596 (1970), nor the Classification Act, supra, provides a remedy for periods of erroneous classification, except in the case of an employee who has suffered a withdrawal or reduction of pay through an improper downgrading. As a result, we are unable to assist you in this matter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Jessica Botsford". The signature is written in dark ink and is positioned above the typed name.

Jessica Botsford
Attorney-Adviser