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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

April 23, 1981

OFFICE OF GENERAL COUNSEL

B-197333

Mr. Robert M. Schabert  
2045 Oxford Street  
Sacramento, California 95815

Dear Mr. Schabert:

This is in response to your letter of October 10, 1980, and our interim letter of January 22, 1981, regarding B-197333, April 23, 1980. In your letter you indicated your belief that the decisions relied on in B-197333 to support the disallowance of your claim for backpay do not have a bearing on your claim.

Available records reflect that you filed a claim which was received by the General Accounting Office on January 25, 1979. As stated in B-197333 and indicated in our Claims Division's Settlement Certificate Z-2813603, issued June 26, 1979, because of the statute of limitations, 31 U.S.C. §§ 71a and 237, only that portion of your claim which accrued after January 25, 1973, is eligible for consideration.

In your claim you requested backpay based on B-183086, December 5, 1975. This is the same decision which was referred to in B-197333 by its published name: Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed 56 id. 427 (1977). As indicated in B-197333 the Turner-Caldwell decision does not apply to or have a bearing on your case. That decision applies to employees who have been detailed to established higher grade positions. It does not apply to positions that are wrongly classified, and the record in your case indicated that you were performing duties which may have been wrongfully classified for all or part of the period of your claim.

As was stated in B-197333 the general rule which applies to Federal employees is that an employee is entitled only to the compensation of the position to which he is appointed. This is true regardless of the duties he performs and includes situations where an employee performs duties that are wrongfully classified in that they should be classified at a higher grade. Unfortunately there is

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no monetary remedy to compensate an employee for the period that he has worked under a job description which was wrongfully classified. The corrective action available in such situations, and the one which you followed, is to request that the position be reclassified. Only after a position is reclassified at a higher grade is an employee entitled to be promoted to and paid the salary of the higher grade. In such situations the employee's duties often do not change. Nonetheless, there is no entitlement to backpay.

With regard to your inquiry regarding the Supreme Court, the Supreme Court ruled on this matter in Testan v. United States, 424 U.S. 392 (1976), and held that neither the Back Pay Act, 5 U.S.C. § 5596, nor the Classification Act, 5 U.S.C. §§ 5101-5115, creates a substantive right to backpay based on a period of wrongful classification. A copy of Testan is enclosed.

Sincerely yours,



Edwin J. Monsma  
Assistant General Counsel

Enclosure