

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-180344

DATE: MAY 17 1976

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## MATTER OF:

Charles J. Peters - Backpay incident to  
extended detail to higher grade position

## DIGEST:

Claimant lost suit in Court of Claims for backpay incident to detail to higher grade duty assignment. He now submits claim for backpay arising out of same allegedly improper detail. This Office will not consider the claim since a final judgment rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent action involving the same claim.

This action is in response to a claim by Mr. Charles J. Peters for the difference in pay between the grade GS-16 position of Associate General Counsel, Federal Aviation Administration (FAA), to which he had been duly appointed and the grade GS-17 position of Deputy General Counsel, FAA, in which he acted during the period from January 8, 1968, to February 22, 1971. He is also seeking an adjustment in his retirement annuity. Mr. Peters is basing his claim on the decision of our Office B-183086, December 5, 1975, 55 Comp. Gen. 539.

The record consists of the legal papers submitted by Mr. Peters associated with his suit in the Court of Claims, Peters v. United States, Ct. Cl. No. 470-73, December 17, 1975, motion for rehearing denied, Ct. Cl. No. 470-73, January 30, 1976, in which he sought recovery of backpay incident to the same detail which is the subject of this claim.

The facts of this case are set forth in the Court of Claims decision of December 17, 1975, and are as follows:

"In 1968, plaintiff was a GS-16 Associate General Counsel at the FAA. On January 8, 1968, he was designated Acting Deputy General Counsel. The post of Deputy General Counsel was then a GS-17 position, but as plaintiff was only 'acting,' he was paid at his GS-16 appointment rate. On September 10, 1968, the Acting FAA Administrator approved a recommendation that plaintiff be

promoted to the GS-17 position of Deputy General Counsel. The Office of the Secretary of Transportation (OST) Executive Personnel Board concurred and the 'Request for Approval of Executive Selection' was sent by the Secretary of Transportation to the [Civil Service Commission] CSC on December 27, 1968, for the purpose of obtaining CSC approval of plaintiff's qualifications under 5 U.S.C. § 3324 (1970).

"On January 22, 1969, the CSC returned a list of high-level personnel proposals, including plaintiff's, to the Department of Transportation (DOT), commenting, inter alia, that 'rather than proceeding with the processing of these cases, we are sending them back to you to ascertain whether the proposed actions are in keeping with the Department's program needs and priorities at this time.' (emphasis added). Plaintiff served as Acting Deputy General Counsel until February 22, 1971, and finally retired on June 29, 1973. That plaintiff performed his duties in an exemplary fashion is not at issue in this case. He now claims both pay and retirement annuity accretions based on the difference between the amounts he received in his GS-16 position and that which he would have received as a GS-17."

The Court of Claims ruled against Mr. Peters on the basis that "Having accepted the benefits of the detail, plaintiff is now estopped to attack its legality." The court also ruled that the CSC did not act arbitrarily or capriciously in returning Mr. Peters' appointment papers, together with others, to Department of Transportation. Finally, the court found that at no time was Mr. Peters appointed to the Deputy General Counsel position and, thus, he was not entitled to the rights and salary of the higher position.

On Motion for Rehearing on the Judgment pursuant to Rule 151, Mr. Peters, among other arguments, directed the Court's attention to the Civil Service Commission's Board of Appeals and Review (BAR) Decision No. 752, B-74-526, April 19, 1974, and the decision of our Office in Matter of Turner and Caldwell, concerning the question

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of backpay arising out of the same matter B-183086, December 5, 1975, 55 Comp. Gen. 539. In that decision we acquiesced to the finding of the above-cited BAR decision and stated:

"\* \* \* where an agency fails to seek prior approval of the Commission to extend an employee's detail period in a higher grade position past 120 days, the agency has a mandatory duty to award the employee a temporary promotion if he continues to perform the higher grade position."

By Order of January 30, 1976, Motion for Rehearing was denied by the Court of Claims.

The record shows that the above action in the Court of Claims constitutes a judicial determination of Mr. Peters' suit on the merits.

Section 2519 of title 28, United States Code, provides that:

"A final judgment of the Court of Claims against any plaintiff shall forever bar any further claim, suit, or demand against the United States arising out of the matters involved in the case or controversy."

Since the time for requesting a writ of certiorari has expired and there is nothing in the file to indicate that a writ had been requested, we can assume that the judgment in the Peters case is final.

A final judgment of the merits, rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies, and as to them constitutes an absolute bar to a subsequent action involving the same claim, demand, and cause of action, whether the plaintiff fails to recover in the same action, or is successful in recovering a part of his claim. The judgment puts an end to the cause of action, which cause cannot again be brought into litigation between the parties upon any grounds, or for any purpose whatsoever, in the absence of some factors involving the judgment. 46 Am. Jur. 2d 404.

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Accordingly, since we are bound by the court's decision with regard to Mr. Peters' claim which is now before us, our Office is without authority to consider the subject claim.

**R.F. KELLER**

Deputy

Comptroller General  
of the United States