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W. Haubert
Civ. Pers.



DECISION

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

FILE: B-187847

DATE: January 25, 1977

MATTER OF: Walter F. Ray and Joseph D. Elam -
Claim for backpay

DIGEST: Employees claim backpay for period when they performed duties normally assigned to higher level position. Claim may not be paid since position had not been classified to a higher grade and employee cannot be promoted to position which does not exist. Further, GAO is without jurisdiction to decide questions involving classification procedures.

This action is in response to a claim dated September 16, 1976, by Messrs. Walter F. Ray and Joseph D. Elam for backpay for a period during which they performed duties normally assigned to a higher grade level.

The record indicates that at all times relevant to this action the claimants were civilian employees of the Department of the Army and were assigned to the Communications Division of the Reserve Components Personnel and Administration Center at St. Louis, Missouri. On November 17, 1973, Mr. Ray was temporarily reassigned from his position of Military Personnel Clerk, grade GS-3, to Motor Vehicle Operator, WG-5. From the effective date of his reassignment until October 31, 1974, Mr. Ray operated a 1-ton truck. On November 1, 1974, he was assigned to a 1½-ton truck which he operated until the temporary assignment was terminated on November 16, 1975. With respect to Mr. Elam, the record indicates that he was temporarily promoted from WG-4 to Motor Vehicle Operator, WG-5, from November 17, 1973, to November 16, 1975. Vehicle dispatch records indicate that Mr. Elam had been assigned to and operated a 1½-ton truck on several occasions during that period.

On December 24, 1975, the claimants submitted to the commander of their headquarters a grievance requesting retroactive compensation for performing the duties normally assigned to a Motor Vehicle Operator, WG-6, for the period during which they were temporarily assigned to the WG-5 position. As corrective action, Mr. Ray requested \$478.40 for the 1 year during which he performed duties at the WG-6 level; Mr. Elam requested \$12 representing his similar duties for 5 pay periods.

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The grievance was ultimately referred to the U.S. Army Civilian Appellate Review Office (CARO) which investigated the matter and, on August 5, 1976, issued its decision and report of findings. Among other findings, CARO determined that the job description for a Motor Vehicle Operator, WG-5, limits the position to operating trucks of a capacity of 1 ton or less, and that, under the Federal Wage System, the operation of a vehicle over 1 ton but less than 4 tons authorizes a position at the WG-6 level. CARO also determined, however, that the position of WG-5 Motor Vehicle Operator had not clearly been established in the organizational unit to which the claimants had been assigned. In light of these findings, CARO reviewed decisions of this Office and of the Supreme Court in United States v. Testan, 424 U.S. 392 (1976), and concluded that backpay cannot be awarded unless the higher grade position has been classified and in fact exists. Based on this conclusion, CARO denied the claimant's grievance.

In submitting their claim to this Office, the claimants do not question the findings of fact made by CARO. The principal issue raised by the claimants concerns the failure of the employing agency to classify and establish the WG-6 position in the organizational unit to which they were assigned. In particular they state that although the WG-6 position existed in another division on the base, it had not been classified for the Communications Division in which they were employed. Characterizing the classification procedure as unfair and inequitable, they request an investigation thereof and reiterate their request for corrective action in the form of backpay.

Concerning the request for an investigation of the classification procedures, it is not within the jurisdiction of this Office to determine whether a position has been properly classified or described. B-186087, June 1, 1976. In this connection we point out that if an employee believes his position is not properly classified, he may appeal his classification to the United States Civil Service Commission. 5 C.F.R. 511.603 (1976). It should be noted that the Civil Service Commission's regulations for position classification provide that the effective date of a classification action taken by an agency or a classification action resulting from an employee's appeal is the date the action is approved in the agency or the appeal is decided or a date subsequent to that date. See 5 C.F.R. 511.701 et seq., and 532.701 et seq. (1976).

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It is well established that an employee may not be promoted to a position which does not exist, and therefore, Messrs. Ray and Elam are not entitled to a higher grade pay for performing the duties normally assigned to a higher grade position which had not been classified in their unit. In this connection we point out that this rule concerning classification actions has recently been confirmed by the United States Supreme Court in United States v. Testan, 424 U.S. 392 (1976).

Accordingly, the claims of Messrs. Ray and Elam for back-pay may not be paid.

Deputy

R. F. K... 1/4/74
Comptroller General
of the United States