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DECISION



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

FILE: B-173783.140

DATE: MAR 22 1977

MATTER OF: William L. Rivera - Compensation Adjustment

DIGEST: Employee's claim for retroactive promotion and back pay where agency failed to reclassify position pursuant to a Management survey teams recommendation is denied, and certificate of settlement is sustained. Rule is that employee is entitled only to pay of position to which he is appointed regardless of duties performed. Where agency fails to reclassify position, employee's remedy is to appeal under Civil Service Commission Classification procedures. See cited decisions.

This action constitutes the appeal of Mr. William L. Rivera from Certificate of Settlement No. 2-261664D, issued August 13, 1976, by our Claims Division which disallowed his claim for a retroactive promotion and back pay. Mr. Rivera, formerly an employee of the Bureau of the Mint, Department of the Treasury, at the Old Mint, San Francisco, California, claims a retroactive promotion from the grade GS-12 to GS-13 and accompanying back pay from February 16, 1975, to August 15, 1976.

The record shows that a Department of the Treasury Personnel Management Evaluation Team which included a representative from the Civil Service Commission, San Francisco, California, conducted a classification survey at the Old Mint in December 1974. The purpose of the survey was to advise Old Mint management of actions which could be taken to help resolve some personnel management problems at that activity. The survey team report dated April 15, 1975, recommended that the position of Assistant Manager, occupied by Mr. Rivera, be upgraded. The report reads in part as follows:

"4. Administrative Services Division

The position of Assistant Manager warrants classification to Grade GS-13. The incumbent manages an organization of over 40 employees through four subordinate branch chiefs. In addition, he rotates as deputy to the Mint manager.

In evaluating the position under SGEF, Part II, we believe GS-9 is an appropriate constructed base level. As a Degree A position, the tentative grade is GS-12. In addition, the position has significant managerial responsibilities, it supervises substantially more than 30 employees, and it has technical supervision over a subordinate supervisor in Grade GS-12. We believe the position warrants classification one grade above the tentative grade.

In the review of the position, it was noted that the incumbent was spending a considerable amount of time on relatively minor administrative details. It was suggested that the more routine matters be delegated to subordinate employees, which would permit more time on managerial matters. If the incumbent is working essentially full time on substantive managerial matters as required by the position description and agreed upon during the review, we recommend that the position be upgraded to GS-341-13. /Emphasis Supplied/

In compliance with the report recommendations his immediate supervisor initiated a request for Personnel Action, SF-52, dated May 12, 1975, and submitted it to the Bureau of Personnel in Washington, the office with classification authority, seeking to upgrade the position of Assistant Manager. Action on this request, was delayed pending an organizational review.

Our Claims Division disallowed the employee's claim on the basis that his position was never reclassified by his agency during the period of the claim. Mr. Rivera now contends that our Claims Division erred in finding his position had not been reclassified and in failing to apply the holdings in our decisions 53 Comp. Gen. 216 (1973) and 54 Comp. Gen. 1071, (1975), to the facts in his case.

On September 5, 1975, Mr. Rivera filed a grievance with his agency alleging that his position was reclassified on December 6, 1974, by the survey team, and thus under our decision 53 Comp. Gen. 216, supra, he was entitled to a promotion not later than February 16, 1975. The Department of the Treasury responded to Mr. Rivera's grievance by letter of November 26, 1975, and informed him that the survey team had not reclassified his position, but had merely recommended that it

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be upgraded. Further the letter advised the employee to arrange for a desk audit of his position in order that a final classification determination could be made on his position, from which he could appeal under Classification Appeals Procedures, if such were necessary.

On November 24, 1975, the employee submitted his claim to this Office, and apparently Mr. Rivera has never complied with the guidance from his agency.

Our review of the survey team's report, quoted above, indicates that the team did not reclassify Mr. Rivera's position, as he contends. On the contrary, the report recommends the position be considered for upward reclassification provided certain specified conditions were satisfied. Thus, Mr. Rivera never became entitled to higher pay.

The general rule is that an employee is entitled only to the salary of the position to which he is appointed regardless of the duties performed. And, unless and until the position is reclassified to a higher grade and the employee is promoted thereto, he is not entitled to a higher salary. 55 Comp. Gen. 515 (1973); B-180056, May 28, 1974.

Since the record indicates that the report of the survey team was advisory and the position of Assistant Manager was never upgraded, Mr. Rivera was not entitled to a retroactive promotion and accompanying back pay. There is no remedy under the Back Pay Act, 5 U.S.C. 5596 (1970), when an agency delays or fails to process a request for reclassification. See for example Testen v. United States, 424 U.S. 392 (1976) and B-187234 December 8, 1976. Neither of the decisions cited by Mr. Rivera is applicable to his situation. The record shows that his position was neither reclassified nor upgraded. Our decision 53 Comp. Gen. 216, supra, involved a situation where the position was upgraded and the agency failed to remove or promote the incumbent. Our decision 54 Comp. Gen. 1071, supra, involved a claim for back pay when an agency improperly denied the employee an overtime assignment in violation of a mandatory provision of a labor-management agreement.

Accordingly, the certificate of settlement is sustained.

R. F. KELLER
Deputy Comptroller General
of the United States