

DOCUMENT RESUME

02285 - [A1432415]

[Claim for Backpay and Retroactive Temporary Promotion ].  
B-187287. May 13, 1977. 3 pp.

Decision re: Hubert J. Buteau; by Paul G. Deabling, Acting  
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation  
(305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel  
Management (805).

Organization Concerned: Defense Mapping Agency.

Authority: 31 U.S.C. 71a. 55 Comp. Gen. 539. 55 Comp. Gen. 735.  
B-183086 (1977). B-187847 (1977).

John R. Vaughn, Comptroller of the Defense Mapping Agency, requested a decision regarding a claim for retroactive promotion and backpay for a period during which an employee claimed that he had performed the duties of an unestablished, higher-grade position. To the extent that the employee may have performed duties before the higher-grade position had been classified, the claim may not be paid. If it is administratively determined that the employee performed higher-level duties after the position had been classified, he may be awarded the retroactive temporary promotion with backpay from the 121st day after classification to the end of the detail. (Author/SC)

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**DECISION**

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

FILE: B-187287

DATE: May 13, 1977

MATTER OF: Hubert J. Buteau - Claim for backpay for detail

**DIGEST:** Employee claims backpay for period during which he contends that he performed duties normally assigned to higher level position. To extent employee may have performed duties before higher grade position had been classified, claim may not be paid since employee cannot be promoted to position which has not been classified. If it is administratively determined that employee performed higher level duties after position had been classified, he may be awarded retroactive temporary promotion with backpay from the 121st day after classification to end of detail under Turner-Caldwell, 55 Comp. Gen. 539 (1975).

By a letter dated August 23, 1976, Mr. John R. Vaughn, Comptroller of the Defense Mapping Agency (DMA), requested a decision of this Office concerning the claim of Mr. Hubert J. Buteau, a DMA employee, for a retroactive temporary promotion and backpay. Mr. Buteau's claim is for the period from December 1, 1969, to October 17, 1971, during which he contends that he performed the duties of an unestablished, higher-grade position.

Our rendition of the facts in this matter is based upon the statements of the claimant, since the employing agency has not submitted its own statement of the facts or in any other manner contested the factual rendition by the claimant. It appears that at all times relevant to this action, Mr. Buteau was assigned to the DMA 1st Geodetic Survey Squadron at the Francis E. Warren Air Force Base, Wyoming. In October 1969, the squadron was evidently reorganized on an experimental basis. Accordingly, Mr. Buteau received a notification of personnel action effective October 1, 1969, detailing him from his position in the Program Division as a Geodesist, grade GS-12, to "an unestablished position" as a Geodesist not to exceed 120 days. Although Mr. Buteau states that the position to which he was detailed was at grade GS-13, no grade or salary was given for that position on the official notification. A subsequent notification of personnel action annulled the detail effective November 29, 1969, but placed him in the newly created Operations Branch. While no grade was mentioned he was to receive the same salary he was receiving in grade GS-12.

Mr. Buteau contends that although his detail had been officially terminated, his squadron remained in the new organizational configuration following the reorganization, and that he continued to perform the duties of a Geodesist grade GS-13, until October 17, 1971, when the reorganization was approved by the appropriate officials, and he was reassigned to his new unit as a Geodesist grade GS-12. The record contains several documents which indicate that the squadron may in fact have retained the new organizational structure after the official termination of the detail. The record further indicates that on June 10, 1971, the agency classified the position of Geodesist at grade GS-13 in the Operations Branch to which Mr. Buteau was assigned by the notification of personnel action which terminated his detail.

Mr. Buteau has predicated his claim for a retroactive temporary promotion and backpay upon our decisions in Matter of Everett Turner and David L. Caldwell, 55 Comp. Gen. 539 (1975) and Matter of Marie Grant, 55 Comp. Gen. 785 (1976). In Turner-Caldwell, we held that employees detailed to higher grade positions for more than 120 days, without Civil Service Commission approval, are entitled to retroactive temporary promotions with backpay for the period beginning with the 121st day of the detail until the detail is terminated. Subsequently, in Marie Grant, we ruled that the Turner-Caldwell decision applied retroactively to extended details to higher grade positions, subject only to the time limitation of 6 years on filing claims imposed by 31 U.S.C. 71a. Since this matter was received by our Office on August 25, 1976, any portion of Mr. Buteau's claim which accrued before August 25, 1970, is forever barred. We recently reconsidered our decision in Turner-Caldwell and Marie Grant at the request of the General Counsel of the Civil Service Commission, and have affirmed our decisions in those cases. Matter of Reconsideration of Everett Turner and David L. Caldwell, B-183086, March 23, 1977, 56 Comp. Gen. \_\_\_\_\_.

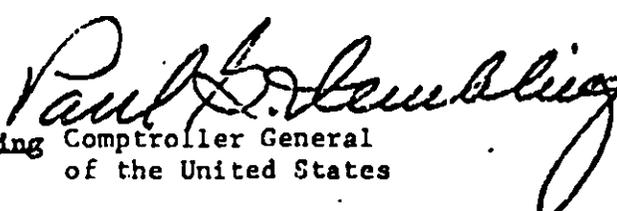
Our decision in Turner-Caldwell involved temporary details to positions which had been previously classified and were, therefore, established higher-grade positions. In the present case, however, Mr. Buteau was officially detailed to an unestablished position. The position of Geodesist grade GS-13, was not classified until June 10, 1971. This distinction is conceded by Mr. Buteau's statement dated April 16, 1976:

"The specific difference between my circumstance and those above in the Turner-Caldwell case is the fact that the GS-13 grade level of the position in question was hinged upon a reorganization, which was not officially accepted until two years after proposal."

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The distinction recognized by Mr. Buteau is, however, critical to his claim because of the well established rule that an employee may not be promoted to a position which has not been classified. Matter of Walter F. Ray and Joseph D. Elam, B-187847, January 25, 1977. Thus, the remedy of temporary promotion and backpay prescribed in Turner-Caldwell is not available where an employee has been detailed to, or has performed the duties of a higher grade position which has not been classified. Accordingly, Mr. Buteau may not be granted a retroactive temporary promotion and backpay for the period until June 10, 1971, when the Geodesist grade GS-13 position was officially classified.

Mr. Buteau states that he continued to perform the duties of the new position, Geodesist grade GS-13, from June 10, 1971, until October 17, 1971, at which time another employee was assigned to the new position. In this regard, we note that no findings of fact have been made by the official who was designated to decide the factual matters raised by Mr. Buteau's grievance. Accordingly, the matter is returned to that officer for an official finding of fact as to whether Mr. Buteau performed the duties of the Geodesist grade GS-13, position during that period. If it is thus determined that the claimant in fact performed the duties of a grade GS-13, an award of a retroactive temporary promotion with backpay may, if otherwise proper, be made from the 21st day after June 10, 1971, the date when the position was classified to grade GS-13, until Mr. Buteau was no longer required to perform the functions of the higher grade position.

  
Acting Comptroller General  
of the United States