

DOCUMENT RESUME

03543 - [A2653821]

[Employee Claim for Compensation Adjustment]. B-188617.  
September 20, 1977. 2 pp.

Decision re: George A. Jackson; by Robert F. Keller, Deputy  
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: General Services Administration.

Authority: Classification Act of 1949 (5 U.S.C. 5101 et seq.).  
Equal Employment Opportunity Act of 1972 (42 U.S.C. 2000e-16  
(Supp. V)). Back Pay Act (5 U.S.C. 5596). 5 C.F.R. 511.101  
et seq. E-187761 (1977). United States v. Testan, 424 U.S.  
392 (1976).

An employee appealed the disallowance of his claim for  
the difference in pay between two grade classifications on the  
basis that he had performed the higher grade duties while in the  
lower grade. He also claimed entitlement to the higher rate  
because his promotion resulted from a complaint to an Equal  
Employment Opportunity counselor. Since no legislation creates a  
substantive right to backpay for a period of wrongful position  
classification, the disallowance of the claim was sustained.  
(SW)

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**DECISION**



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

**FILE: B-188617**

**DATE: September 20, 1977**

**MATTER OF: George A. Jackson - Compensation Adjustment**

**DIGEST:** General Services Administration employee who holds position as Supervisory Federal Protective Officer, GS-6, claims compensation adjustment for period he served in GS-5 position title prior to promotion. Claimant has no entitlement under civil service regulations and Supreme Court held in United States v. Testan, 424 U.S. 392 (1976) that neither Classification Act, 5 U.S.C. 5101 et seq. (1970), nor Back Pay Act, 5 U.S.C. 5596 (1970), creates substantive right to backpay for period of wrongful classification.

This action concerns an appeal by Mr. George A. Jackson, from Settlement Certificate No. Z-2483519, November 1, 1976, disallowing his claim for the difference in pay between grades GS-5, step 6, and GS-6, step 5, from December 12, 1971, through September 3, 1972, as an employee of the General Services Administration (GSA).

The record shows that Mr. Jackson was employed by GSA in Philadelphia, Pennsylvania, as a Guard Supervisor, GS-4, step 8, \$6,342 per annum, from December 15, 1968, until May 16, 1971. Effective the latter date he was temporarily promoted to the position of Federal Protective Officer, GS-5, step 6, \$8,093 per annum. This promotion was made permanent on September 5, 1971. Effective December 12, 1971, Mr. Jackson was reassigned to the position of Supervisory Federal Protective Officer, grade GS-5, step 6. On September 3, 1972, he was promoted to Supervisory Federal Protective Officer, GS-6, step 5. He claimed the difference between the GS-5 and GS-6 pay on the ground that he had performed the higher grade duties while in the lower grade. Mr. Jackson has appealed the disallowance of his claim. He believes he is entitled to the higher rate of pay since others performing duties similar to those performed by him were paid rates at GS-6. He also asserts that he is entitled to the higher rate since his promotion resulted from a complaint to the Equal Employment Opportunity counselor.

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The Classification Act of 1949, now codified in 5 U.S.C. 5101 et seq. (1970), governs classification of Federal positions in the General Schedule. Under the statute and implementing regulations in 5 C.F.R. 511.101 et seq., the employee's agency and the Civil Service Commission are primarily responsible for the classification of the duties of the employee's position. With one exception not pertinent here classification actions may not be made retroactive under civil service regulations. Also, the Supreme Court held in United States v. Testan, 424 U.S. 392 (1976), that neither the Classification Act nor the Back Pay Act, 5 U.S.C. 5596 (1970) creates a substantive right to backpay for a period of wrongful position classification. See, Gary K. Neller, B-187861, May 27, 1977.

Further, Mr. Jackson has no entitlement under the Equal Employment Opportunity Act of 1972, 42 U.S.C. 2000e-16 (Supp. V, 1975), since there has been no award of backpay under that Act.

In view of the foregoing, the disallowance of Mr. Jackson's claim is sustained.

  
Deputy Comptroller General  
of the United States