

DOCUMENT RESUME

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[Retroactive Pay Adjustment]. B-189324. October 18, 1977. 5 pp.

Decision re: C. Lawrence Vache; by Robert F. Keller, 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: Department of the Air Force: Tinker AFB, OK.

Authority: 5 U.S.C. 5335(a). 54 Comp. Gen. 69. 30 Comp. Gen. 82. 21 Comp. Gen. 95, 6. 5 C.F.R. 531.202(h). F.P.M. Supplement 296-31. F.P.M. Supplement 990-2.

Preston L. Adair, a disbursing officer of the U.S. Air Force, requested an advance decision as to whether a temporarily promoted employee is entitled, upon permanent promotion, to have a periodic step-increase to which he would have been entitled but for the temporary position used in setting his pay rate. The employee was not entitled to the step-increase since the permanent promotion merely removed the temporary limitation placed on the initial promotion to the higher grade. (Author/SC)

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DECISION



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

FILE: B-189324

DATE: October 18, 1977

MATTER OF: C. Lawrence Vache - Retroactive Pay
Adjustment

DIGEST: Temporarily promoted employee was permanently promoted to another position in same grade without being returned to his former lower-grade position. The employee's pay in the permanent position may not be adjusted to reflect a periodic step-increase which he would have received in the lower-grade position. The permanent promotion merely removed the temporary limitation placed upon the initial promotion to the higher grade.

This matter concerns a request for an advance decision by Mr. Preston L. Adair, a disbursing officer of the U.S. Air Force at Tinker Air Force Base, Oklahoma, pertaining to a supplemental voucher submitted by Mr. C. Lawrence Vache, a civilian Air Force employee, for \$487.29 representing additional compensation from July 4, 1976, through April 23, 1977. The question presented is whether a temporarily promoted employee is entitled, upon permanent promotion, to have a periodic step-increase to which he would have been entitled in his lower grade but for the temporary promotion used in setting his pay rate.

The facts presented by the administrative record are briefly stated as follows. Mr. Vache was employed by the United States Air Force as a Supervisory Mechanical Engineer, with an occupation code of GS-830(024) at grade GS-13, step 7, per annum salary of \$27,490. Effective November 9, 1975, Mr. Vache was temporarily promoted to the position of Supervisory Aerospace Engineer, with an occupation code of GS-861(092), at grade GS-14, step 4, per annum salary of \$29,546. This temporary promotion was not to exceed 1 year as stated in the Notification of Personnel Action (SF-50). The form further stated that Mr. Vache had been informed in advance of the reasons for and the conditions of the promotion, and that he was exempt under FLSA. On July 2, 1976, a Request for Personnel Action (SF-52) was forwarded to

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the appropriate personnel office requesting that Mr. Vache's temporary position as a Supervisory Aerospace Engineer be abolished effective July 4, 1976. The request was signed by the Chief, Office of MASIIS, where Mr. Vache was temporarily employed. On July 6, 1976, Mr. Vache reported to his former office, MME, stating that he had been released from his position to which he had been temporarily promoted to GS-14 in the Office of MASIIS. Mr. Vache stated further that he was returning to duty in MME since that was the organization to which he was assigned when promoted temporarily. The Deputy Chief of Engineering Division, MME, advised Mr. Vache to return to the Mechanical Section, MMETC, and work with Mr. G. Smith, the employee who had assumed Mr. Vache's temporarily vacated GS-13 supervisor position. However, effective July 18, 1976, Mr. Vache was permanently promoted from his temporary position as a Supervisory Aerospace Engineer, to a permanent position as a Supervisory Technical Management Specialist, occupation code GS-0301, GS-14, step 4, per annum salary of \$29,546. This action was accomplished by SF-50, "Notification of Personnel Action."

Mr. Vache contends that the circumstances involving his temporary promotion to a GS-14 position, his release date from performing the duties of that position, and his subsequent permanent promotion to a different GS-14 position led to the setting of an erroneous pay rate at which he is presently being paid. Specifically, Mr. Vache contends he should have been returned to his former position at GS-13, step 7, salary of \$27,490 per annum, on July 4, 1976. At that time he would have been eligible for a within-grade increase to step 8, with a salary of \$28,254 per annum. Then, effective July 18, 1976, when he was given a permanent promotion to a GS-14 position, the step adjustment would have been to step 5, with a salary of \$30,441 per annum. Mr. Vache asserts that "The SF 52 abolishing my temporary promotion is a valid personnel action." Therefore he believes that for the interim pay period, July 4 to July 17, 1976, he should have been returned to his permanent GS-13 position and been given benefit of the within-grade increase to step 8, to which he had become entitled while serving in the temporary GS-14 position. Had this action been taken, his rate of pay upon promotion to the permanent GS-14 position would have been set at step 5 rather than step 4.

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He asserts that the correction of his records with corresponding retroactive pay adjustments would be in accordance with such decisions as 54 Comp. Gen. 69 (1974).

The Air Force Civilian Personnel Office states that its actions were proper and that Mr. Vache will be eligible for his next within-grade increase to step 5 on or about November 6, 1977.

Section 5335(a) of title 5, United States Code (1970), provides that an employee shall be advanced on a periodic basis to the next highest rate within the grade of his position provided that his work is of an acceptable level of competence, and he did not receive an equivalent increase in pay during the period. Under the terms of the statute, the concept of equivalent increase is only used to determine whether an employee may be granted a within-grade step increase. That authority does not address the issue of the rate at which an employee's pay is to be set upon permanent promotion to a higher grade following a temporary promotion to such grade.

The Civil Service Commission, however, has issued FPM Supplement 296-31 to provide guidance for processing personnel actions. Specifically, section A-3 of subtable 6-3, table 4, Book V, states that when a temporary promotion is later made permanent, the personnel action is "[e]ffected for the sole purpose of removing an indefinite or temporary limitation placed on the last promotion." Although such a personnel action ordinarily contemplates the situation where the employee is permanently assigned to the position to which he had been temporarily promoted, the Commission's instruction is not restricted to that type of situation. Thus, an action removing a temporary limitation on a promotion is appropriate where the employee is assigned to another position at the higher grade because the nature of the action (e.g., promotion, demotion, etc.) is determined by the grade in which the employee is placed, rather than by the position to which he is assigned. See 5 C.F.R. § 531.202(h) (1976). Since the personnel action by its terms merely removes a temporary time limitation, the individual's rate of compensation is properly determined upon the facts and circumstances in existence at the time of the initial, temporary promotion,

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giving consideration to time served in the higher grade. Time served in the temporary appointment is credited for purposes of determining the within-grade step increase entitlement in that higher grade. Subchapter S4-7d of Book 531, FPM Supplement 990-2. Thus, decisions of this Office have held that an employee who receives a temporary appointment is entitled, upon restoration to his former position, to any within-grade increases in his regular position to which he may be entitled. 30 Comp. Gen. 82 (1950). Where the employee is not restored to his former grade, there is no authority by which he may be granted the benefit of within-grade increases to which he may have been entitled in the lower-grade position.

As noted above, Mr. Vache contends that he was in fact restored to his grade GS-13 position for 1 pay period prior to being permanently assigned to another grade GS-14 position. It is his view that such action was effected by the SF-52, Request for Personnel Action, executed on July 2, 1976, requesting the abolition of the position to which he was temporarily promoted.

We note at the outset that in cases where a request involves both a person and a position, the SF-52 is to indicate the type of personnel and position actions desired. See FPM Supp. 296-31, subchapter S2-1 of Book IV, part IA. Also, the rule is well established that the effective date of a change in salary is the date action is taken by the administrative officer vested with proper authority, or a subsequent date fixed by him. 21 Comp. Gen. 95, 96 (1941). Thus, a change of salary to a lower grade is not effected by an SF-52, which merely requests the action, but by an SF-50, Notification of Personnel Action, after the request has been approved by an official authorized to do so. See FPM Supp. 296-31, Book II, sections S-10c, S-19, S-20. In the present case, the record indicates that an operating official, rather than an appointing official submitted the SF-52 requesting the position action. Further, there is no SF-50 or other evidence in the record which indicates that the requested action was approved and that Mr. Vache's salary should be changed to a lower grade. Since no intervening action was taken on the requested position cancellation, the personnel action permanently promoting Mr. Vache on

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July 18, 1976, was correct. Thus, Mr. Vache was never restored to his previous lower-grade position. Since, as indicated above, restoration to the lower grade is a prerequisite to the benefit of any within-grade increases accruing in that position, Mr. Vache had no entitlement to a step increase at the time his promotion to grade GS-14 was made permanent.

Accordingly, the voucher submitted by Mr. Vache may not be paid.


Acting Comptroller General
of the United States