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David Agazarian

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DECISION



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

FILE: B-190335

DATE: February 14, 1978

MATTER OF: Katherine Crump-Wiesner - Backpay for Detail

DIGEST: Employee claims backpay for performing duties of higher graded position for period beginning July 19, 1976. Record indicates that higher graded position was cancelled on July 31, 1976, and was not reestablished until April 5, 1977. If it is administratively determined that employee performed higher graded duties she may only receive backpay from 121st day after position was reestablished to end of detail. Retroactive temporary promotion and backpay for details in excess of 120 days without CSC approval may be granted only for details to classified positions.

This decision is rendered in response to a request for an advance decision by Mr. James A. Williams, Director, Division of Budget and Finance, Federal Trade Commission concerning the claim of Ms. Katherine Crump-Wiesner, an agency employee, for a retroactive temporary promotion and accompanying backpay for the period from July 19, 1976, to the termination date of her alleged detail which she stated was continuing as of the date she filed her claim with the agency, July 6, 1977.

The record shows that Ms. Crump-Wiesner held the position of Supervisory Management Analyst (Chief Information Analysis Section) GS-343-13. On July 31, 1976, the position of Supervisory Management Analyst (Chief Management Analysis Branch) GS-343-14, became vacant as a result of the resignation of the incumbent.

On July 16, 1976, the Chief of the Management Division issued a memorandum to the staff of the Management Division in which he stated the following:

"Effective July 19, 1976, Kathy Crump-Wiesner will assume the responsibilities of Acting Chief of the Management Analysis Branch."

The agency states that upon the resignation on July 31, 1976, of the Supervisory Management Analyst (Chief Management Analysis

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Branch; the position description for the GS-14 position he had occupied was cancelled. The record indicates that the position of Chief of the Management Analysis Branch, GS-343-14, was reestablished on April 5, 1977.

Ms. Crump-Wiesner is claiming backpay based on our decisions which have held that employees detailed to higher graded 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 and continuing until the detail is terminated. David L. Caldwell and Everett Turner, 55 Comp. Gen. 539 (1975) and Marie Grant, 55 Comp. Gen. 785 (1976). However, these decisions are applicable only to details to higher graded positions which have been classified by competent authority since there can be no promotion to a position which has not been classified. Hubert J. Buteau, B-187287, May 13, 1977. Accordingly, if Ms. Crump-Wiesner performed the higher graded duties of the Chief Management Analysis Branch, she may be granted a retroactive temporary promotion and backpay only for the period of her alleged detail from the 121st day after April 5, 1977, when the Chief Management Analysis Branch GS-14 position was officially reestablished. Inasmuch as the prior GS-14 position was cancelled on July 31, 1976, the 15 days in July 1976 during which Ms. Crump-Wiesner may have been detailed to that substantially identical position are not to be considered in determining the beginning date of her backpay entitlement.

We note that the agency has not made a determination as to whether Ms. Crump-Wiesner did in fact perform the duties of a higher graded position. Accordingly, the matter is returned to the agency for an official finding of fact as to whether Ms. Crump-Wiesner performed the duties of the Chief Management Analysis Branch GS-14 position for the period after April 5, 1977. If it is determined that the claimant did in fact perform the duties of the grade GS-14 position, award of a retroactive temporary promotion with accompanying backpay may, if otherwise proper, be made from the 121st day after April 5, 1977, the date when the position was reestablished, until Ms. Crump-Wiesner was no longer required to perform the duties of the higher graded position.

Deputy

R. F. Keller
Comptroller General
of the United States