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*General
Civil Pers*

DECISION



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

FILE: 3-191153

DATE: May 15, 1978

MATTER OF: Dee R. Gaddes - Retroactive Reclassification

DIGEST:

GS-11 employee of Department of the Air Force claims backpay on basis of alleged entitlement to retroactive reclassification from GS-11 to GS-12. While conflict exists between employee and agency as to whether claimant performed GS-12 duties, he occupied only GS-11 position during period of claim. 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. 5101-5115 (1970) nor Back Pay Act, 5 U.S.C. 5596 (1970) creates substantive right to backpay for period of wrongful classification.

This action concerns the claim of Mr. Dee R. Gaddes for backpay on the basis of alleged entitlement to retroactive reclassification from GS-221-11 to GS-221-12 for the period July 1, 1971, to July 11, 1976, as an employee of the Department of the Air Force. Mr. Gaddes has appealed our Claims Division settlement dated December 9, 1977, disallowing his claim.

The record shows that during the period in question the claimant was assigned to position number 0-40005-0 which was classified as Position Classification Specialist GS-221-11. The claimant alleges that during that period he performed the duties of position number 0-40003-0, which was classified as GS-221-12. The claimant initially filed a classification appeal with the Denver Regional Office of the Civil Service Commission. However, since he was assigned to a different position on July 11, 1976, his appeal was cancelled on August 26, 1976. Mr. Gaddes then filed a grievance with the Air Force concerning his classification. On the basis of the Appellate Review Office Examiner's Report dated April 22, 1977, which recommended denial, the commander denied the grievance. Subsequently, the claim was disallowed by the Hill Air Force Base Civilian Personnel Branch Chief on August 22, 1977.

Mr. Gaddes alleges that he performed duties at the GS-12 level and he has submitted organizational charts and personal statements of co-workers to substantiate the allegation. The Examiner's report, referred to above, contains the following discussion:

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"a. The basic distinction in issue is the degree of management advisory service performed. The note from the former supervisor said, in part, 'Based upon the standards this assigned area of responsibility was at the GS-11 level and by providing top management position management and management advisory services... this would equate at the GS-12 level.' Grievant would interpret this to mean the signer, Leslie Norton, was saying grievant was in fact performing such services. However, Mr. Norton submitted an affidavit in which he said, 'I attempted to qualify my signature by stating... that if top management advisory services had, in fact, been provided, then credit for GS-12 type work would be appropriate. I at no time meant to infer that I was personally aware that such services had, in fact, been rendered by Mr. Geddes' [Emphasis added] He went on to say that Mr. A. Dewey Gunn had been grievant's first-level supervisor and would be best qualified to evaluate performance.

"b. Mr. Gunn furnished an affidavit flatly contradicting grievant's claim stating that contrary to providing top management advisory service Gunn received negative feedback and was forced to intercede himself.

"c. Grievant submitted four commendatory letters attesting to his management advisory services. * * *

In rebuttal to Mr. Norton's disclaimer, the claimant states that Mr. Norton "knew very well what he was signing." Mr. Geddes has recounted various alleged communications between himself and Mr. Norton which would, if accepted, tend to support Mr. Geddes' position. Mr. Geddes maintains that Mr. Gunn's affidavit should be discounted for various reasons. Mr. Geddes has also provided our Office with rebuttal to various portions of the testimony given at his grievance hearing which was subsequently included in the Examiner's report.

The facts as presented by the agency and those presented by the claimant are in direct conflict as to whether the claimant performed GS-12 duties. However, it is clear that Mr. Geddes occupied only a GS-11 position during the entire period of his claim.

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The classification of positions in the General Schedule is governed by the Classification Act of 1949, as amended, now codified at 5 U.S.C. §§ 5101-5115. Section 5115 empowers the Civil Service Commission to prescribe regulations regarding the classification of positions. The regulations of the Commission are at title 5 of the Code of Federal Regulations. Section 511.701, of title 5 of the Code of Federal Regulations provides that the effective date of a classification action taken by an agency is the date the action is approved in the agency or a subsequent date specifically stated. Section 511.702 provides that the effective date of a classification action upon appeal to the agency or the Commission, subject to the provisions of section 511.703, is no earlier than the date of the appeal and not later than the beginning of the fourth pay period following the date of the decision, except that a subsequent date may be specifically provided by the Commission. The sole provision for a retroactive effective date for classification is when there is a timely appeal which results in the reversal, in whole or part, of a downgrading or other classification action which had resulted in the reduction of pay. See 5 C.F.R. § 511.703. Accordingly, the reclassification of a position may not be made retroactively other than as provided for in 5 C.F.R. § 511.703. See Matter of Marion McCaleb, 55 Comp. Gen. 515 (1975).

Also, the Supreme Court in United States v. Testan, 424 U.S. 392 (1976), considered the issue of employees' entitlement to backpay when their positions were allegedly improperly classified. The Supreme Court held that " * * * neither the Classification Act nor the Back Pay Act, 5 U.S.C. § 5596 (1970) creates a substantive right in the respondents to backpay for the period of their claimed wrongful classifications." 424 U.S. at 407. The decisions of this Office, consistent with Testan, hold that classification actions upgrading a position may not be made retroactive so as to entitle the incumbents to backpay. See Matter of George A. Jackson, B-188617, September 20, 1977, and Matter of Gary K. Neller, B-187861, June 17, 1977.

In view of the above the settlement of December 9, 1977, denying the claim of Mr. Geddes is sustained.


Deputy Comptroller General
of the United States