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*Civ. Per.
W. Golden*

DECISION



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

FILE: B-191798

DATE: July 13, 1978

**MATTER OF: John J. Curry - Retroactive Promotion and Backpay
for Extended Detail to Higher Grade**

DIGEST: Geological Survey employee, detailed to higher grade position for extended period, was not promoted to higher position because of Presidential freeze, and subsequent agency-imposed freeze, on promotions. Although employee is ordinarily entitled to retroactive promotion with backpay for period beyond 120 days pursuant to 55 Comp. Gen. 539 (1975), employee's promotion was properly not made during Presidential freeze. However, agency-imposed freeze does not bar retroactive promotion and backpay. Therefore, employee is entitled to retroactive promotion beginning on date Presidential freeze was lifted. See 56 Comp. Gen. 732 (1977).

This action is taken pursuant to a request from Posey B. Howell, Chief, Branch of Financial Management, Geological Survey, Department of the Interior, for an advance decision regarding the claim of Mr. John J. Curry, a former Geological Survey employee, for a retroactive promotion and accompanying backpay.

Mr. Curry, a GS-12 employee, served as the Acting Chief, Washington Distribution Section, Publication Division, a GS-13 position, from September 17, 1972, to February 18, 1973, when he was officially selected to that position. However, as a result of the President's December 11, 1972, freeze, and subsequent departmental freeze, on hirings and promotions, Mr. Curry was not promoted at that time. When the freeze was finally lifted on March 18, 1973, Mr. Curry was noncompetitively promoted to GS-13. Our decision is requested as to whether Mr. Curry may be given a retroactive promotion and backpay on or after January 16, 1973, the 121st day of his detail, in accordance with our Turner-Caldwell decision, 55 Comp. Gen. 539 (1975).

In 55 Comp. Gen. 539, supra, we held that employees detailed to higher grade positions for more than 120 days, without prior 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, provided they are otherwise qualified for such promotion. That decision was made retroactively effective, subject to the statute of limitations on claims, in 55 Comp.

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Gen. 785 (1976), and both decisions were reaffirmed in 56 Comp. Gen. 427 (1977).

Hence, if there had been no freeze on promotions, Mr. Curry would clearly have been entitled to a retroactive promotion with backpay as of January 16, 1973, the 121st day of the detail, since no extension of the detail was obtained from the Civil Service Commission.

The Presidential freeze covered the period from December 11, 1972, to January 29, 1973. The Department of Interior, as most other Federal agencies, subsequently extended this freeze for several weeks. In 56 Comp. Gen. 732 (1977), a case also dealing with details to higher grade positions for extended periods, we distinguished between the effect of the Presidential freeze as opposed to that of an agency-imposed freeze, and concluded that only the former served to bar promotions for the duration of the freeze. See page 737. Also, we pointed out that 55 Comp. Gen. 539, *supra*, overruled 52 Comp. Gen. 920 (1973) which held that there was no entitlement to a retroactive promotion and backpay when a detail exceeded 120 days. See page 736. Therefore, we concluded that, while a temporary promotion could not have been made during the period of the Presidential freeze, an employee who was detailed to a higher grade position for more than 120 days, without prior authorization of the Civil Service Commission, was entitled to a promotion on February 7, 1973, during the time of an agency freeze on promotions.

In the present case, Mr. Curry was detailed on September 17, 1972, for a period in excess of 120 days without prior Civil Service Commission approval. In accordance with 56 Comp. Gen. 732, *supra*, he is not entitled to a retroactive promotion and backpay from January 16, 1973, the 121st day of his detail, since the Presidential freeze on promotions was in effect then. However, Mr. Curry is entitled to a retroactive promotion with backpay beginning January 29, 1973, the day the Presidential freeze was lifted.

R. K. K. K.
Deputy Comptroller General
of the United States