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**DECISION**



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

**FILE: B-191351**

**DATE: August 7, 1978**

**MATTER OF: Robert L. Morton - Periodic step-increase**

- DIGEST:**
1. The rules governing waiting periods for step increases on resumption of former grade and step following a temporary promotion are not for application where an employee is demoted under an adverse action from a permanent promotion position and returned to his former grade and step in which he performed satisfactorily.
  2. Where an increase in pay on promotion constitutes an equivalent increase under 5 U. S. C. 5335(a)(3)(A) and Subchapter S4-8(b), of FPM 990-1, the effective date of such promotion would be the inception date for a new waiting period, and the fact that employee was demoted and returned to his former grade and step would not negate the promotion date as the inception date of that new waiting period for a periodic step-increase in the lower grade.

This action is in response to a letter dated February 16, 1978, reference 953, from Ms. Josephine Manzanares, Authorized Certifying Officer, Bureau of Reclamation, Department of the Interior, requesting an advance decision concerning the waiting period for a within-grade increase and the proper timing for the granting of such increase in the case of Mr. Robert L. Morton, a former Bureau of Reclamation employee who transferred to the Department of Energy, effective October 1, 1977.

The submission states that on September 28, 1974, the employee was granted a within-grade increase from the eighth to the ninth step of grade GS-11, in his position as power area dispatcher, 301 series. Under normal circumstances, his next within-grade increase would not have been due until September 25, 1977, to satisfy the three-year waiting period requirement contained in 5 U. S. C. 5335(a)(3). However, on November 9, 1975, the employee was promoted to grade GS-12 as Chief, Fort Peck Area Dispatching Field Branch, in the same series, with his salary set at the fifth step of that grade.

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The submission states that the employee served in that capacity until July 19, 1977, when he was downgraded under an adverse action to his former position of grade GS-11. Based upon Department of Interior Regulation 370 DM 531.2.1, the employee was returned to and resumed the pay of the ninth step of grade GS-11 because it was determined that he had formerly held and satisfactorily performed the duties of that position during his continuous period of service. However, the question has been raised as to the correct timing of the granting of the employee's next within-grade increase to step 10.

According to the submission, the personnel office serving the employee is of the opinion that based on the last sentence of the before-cited provisions of the Department of Interior regulation, his promotion to grade GS-12 should be treated in the same manner as a temporary promotion, that is, for the purpose of the waiting period for the within-grade increase at the lower grade, treating the promotion as though it never occurred. This would permit the employee to be eligible for a within-grade increase to the tenth step of grade GS-11, effective September 25, 1977.

In contrast to that position, the payroll office of the Bureau of Reclamation expresses the view that the employee's promotion to grade GS-12 may not be disregarded and the rules governing temporary promotions are inapplicable since the position to which promoted and from which demoted was a permanent position. As a result, it is believed that under the equivalent increase rule the date of promotion would begin a new waiting period for his next within-grade increase at the lower grade. It is suggested, however, that two possible dates for the granting of his next within-grade increase exist; (1) Two years from the effective date of his promotion to grade GS-12 (November 9, 1975), in recognition of the fact that he was promoted to and served in step 5 of that grade; or (2) three years from the effective date of his promotion to grade GS-12 because he was in the ninth step of grade GS-11 at that time.

The Department of Interior Regulation 370 DM 531.2.1, provides as follows:

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"Subchapter 2. Determining Rate of Basic Compensation

"1.1 General Provisions

"A. If a change to a lower grade is the result of unsatisfactory performance, adjustment shall be made to the minimum rate of the lower grade, unless the employee is changed to a position formerly held during his current continuous period of service and he performed the duties of that position satisfactorily. In the latter case, pay may be adjusted to any rate which does not exceed the rate the employee would have attained in the position to which he is being changed had he remained therein."

The foregoing provisions are based on Subchapter S2-4a(2) of Book 531, Federal Personnel Manual (FPM) Supplement 990-1, which provides in part in subsection (c) thereof that:

"(c) \* \* \* when an employee is \* \* \* demoted, the agency may pay him at any rate of his grade which does not exceed his highest previous rate \* \* \*."

It is clearly evident that the Department of Interior regulations reasonably establishes the rate of pay payable to an employee on demotion at a specific rate not to exceed his highest previous rate as authorized by the FPM. However, notwithstanding the language of the last sentence thereof, wherein it states that the rate will not exceed the rate the employee would have attained in the position to which changed had he remained therein, it is our view that such language does not create an entitlement in the employee to use all of the time since first attaining the ninth step of grade GS-11, as part of the waiting period for a periodic step-increase required under the provision of 5 U. S. C. 5335(a)(3).

With regard to the waiting period for periodic step increases, 5 U. S. C. 5335, provides in part that:

"(a) An employee paid on an annual basis, and occupying a permanent position within the scope of the General Schedule, who has not reached the maximum rate of pay

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for the grade in which his position is placed, shall be advanced in pay successively to the next higher rate within the grade \* \* \* following the completion of--

\* \* \* \* \*

"(3) each 156 calendar weeks of service in pay rates 7, 8 and 9; subject to the following conditions:

"(A) the employee did not receive an equivalent increase in pay from any cause during that period \* \* \*."

Based on the foregoing Code provisions, Subchapter S4-7b of Book 531 of FPM Supplement 990-1 provides in part that:

"(b) A waiting period begins:

\* \* \* \* \*

"(3) on receiving an equivalent increase."

Subchapter S4-8(b) of Book 531 of FPM Supplement 990-1 describes an equivalent increase as an increase or increases in an employee's rate of basic pay equal to or greater than the amount of the within-grade increase for the grade in which the employee is serving.

When the employee was promoted from grade GS-11, step 9 to GS-12, step 5 in November 1975, his increase in pay by that promotion constituted an equivalent increase and, thus, would be the inception date for a new waiting period. The fact that the employee was later demoted and returned to his former grade and step would not negate the new waiting period since at the time the promotion was proper and he received the benefits thereunder.

Therefore, Mr. Morton's new waiting period for a periodic step-increase to step 10 of grade GS-11 extends for three years from the effective date of his promotion to grade GS-12.

  
Deputy Comptroller General  
of the United States