

DECISION

H. Bureau P.M.

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

7633

FILE: B-192449

DATE: September 12, 1978

MATTER OF: Delmore E. John - Detail to Higher Grade
Position

DIGEST: Employee at GS-12 level was detailed to GS-13 position for more than 120 days without agency request for Civil Service Commission approval as required by regulations. Employee was subsequently permanently appointed to the GS-13 position by the President. Employee is not entitled to retroactive temporary promotion for the period of detail since the law requires the Governor to recommend and the President to appoint to the GS-13 position. Subsequent appointment by the President for the permanent position does not constitute endorsement of his qualifications for promotion during his detail.

This decision is rendered at the request for an advance decision from Mr. R. F. Wisniewski, Administrative and Logistics Manager, Office of the Director, Selective Service System, dated December 29, 1977, addressed to our Claims Division, as to whether Mr. Delmore E. John, a former employee of the Selective Service, is entitled to a retroactive temporary promotion incident to his detail to the position of Acting State Director, for approximately 9 months.

Mr. Wisniewski states that on January 25, 1975, Mr. John was detailed from his permanent position as Deputy State Director/Operations Officer, a GS-12 position, to be Acting State Director, a GS-13 position. Mr. John remained in this detail (without prior approval from the Civil Service Commission for the period beyond 120 days) until October 23, 1975, at which time he was officially appointed by the President as State Director and converted to an excepted appointment, Schedule A, GS-13. Mr. John received a temporary promotion to grade GS-13 on September 14, 1975, pending completion of a background investigation for the State Director's position. The delay in the appointment was due to the failure of the Governor of Utah to nominate Mr. John until September 3, 1975, 220 days after he was appointed Acting State Director.

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In view of our decision in the Turner-Caldwell case, 55 Comp. Gen. 539 (1975), Mr. Wisniewski asks whether Mr. John is entitled to a retroactive temporary promotion for having been detailed to a higher grade position for more than 120 days. In that decision, we granted backpay to two employees who had served extended details in higher grade positions. Our decision was based on an interpretation by the Board of Appeals and Review that, under the Commission's regulations, if an agency detailed an employee to a higher grade position for more than 120 days without seeking prior approval from the Commission, the employee would be entitled to a retroactive temporary promotion from the 121st day of his detail until the detail terminated.

In the instant case, Mr. John was detailed to a higher grade position for approximately 9 months, and the Selective Service failed to apply to the Commission for approval to extend the detail.

Our decision 55 Comp. Gen. 539, supra, did not address the situation in which the employee was detailed to a position requiring gubernatorial nomination and presidential appointment.

Section 460(b)(2) of title 50, Appendix, U.S.C., provides as follows:

"The President is authorized—

* * * * *

"(2) to appoint, upon recommendation of the respective governor or comparable executive official, a State director of the Selective Service System for each headquarters in each State, Territory, and possession of the United States and for the District of Columbia, who shall represent the governor and be in immediate charge of the state headquarters of the Selective Service System * * *."

By decision 56 Comp. Gen. 427 (1977), we reaffirmed our decision in the Turner-Caldwell case, 55 Comp. Gen. 539, supra. However, in our reaffirmation we qualified Turner-Caldwell as follows:

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"* * * It is necessary, however, that the employee satisfy the requirements for a retroactive temporary promotion. In this connection, certain statutory and regulatory requirements could affect the entitlements of an employee otherwise qualified for corrective action as a result of an improper extended detail. For example, an employee improperly detailed for an extended period, who fails to meet the time in grade requirements of the 'Whitten Amendment,' 5 U.S.C. § 3101 note, would not become entitled to a retroactive temporary promotion until such time in grade requirements were satisfied. See 55 Comp. Gen. 539, 543. Similarly, an employee improperly detailed to a grade GS-16, 17 or 18 position for an extended period would not be entitled to a retroactive temporary promotion unless the provisions of 5 U.S.C. § 3324 governing appointments to such supergrade positions had been complied with. * * *"

Section 460(b)(2), quoted above, clearly requires gubernatorial nomination and presidential appointment to promote an individual to the State Directorship. An agency cannot unilaterally place an employee in a presidentially appointive position and at some later date request presidential approval of his qualifications for the purpose of granting him a retroactive appointment. The subsequent appointment of Mr. John for the permanent GS-13 promotion is not an endorsement of his qualifications for a retroactive temporary promotion for the period of his detail. See 56 Comp. Gen. 432 (1977); B-188195, January 3, 1978.

Accordingly, Mr. John may not receive a retroactive temporary promotion with backpay for his services as Acting State Director.

Wilton J. Auster

Acting Comptroller General
of the United States

UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

Memorandum

H. Deane
11/11/70

TO : Director, Claims Division

SEP 12 1970

FROM : ^{Acting} Comptroller General MILTON S. EISENBERG

SUBJECT: ~~Delmore E. John~~ Delmore E. John - B-192449-O.M.

Herewith attached is your file Z-2790104 along with a copy of our decision of today which denies claimant's request for a retroactive temporary promotion and backpay. We are also attaching a copy of our transmittal letter to Senator Jake Garn.

Attachments



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

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B-192449

September 12, 1978

The Honorable Jake Garn
United States Senator
4225 Federal Building
Salt Lake City, Utah 84138

Dear Senator Garn:

Reference is made to your letter dated August 7, 1978 (reference: Shirley Jensen), with enclosures, on behalf of Mr. Delmore E. John, who requested a retroactive temporary promotion and backpay as a former employee of the Selective Service System.

Enclosed is a copy of our decision of today which denies Mr. John's claim.

Sincerely yours,

Acting Comptroller General
of the United States

Enclosure