

DECISION

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

FILE: B-191480

DATE: October 2, 1978

MATTER OF: Findlay McKay - Detail to Higher Grade
Duties

DIGEST: Corps of Engineers employee was assigned to higher grade duties under a training program which led to progressive promotions to such grades. Employee claims entitlement to retroactive promotions with backpay for performing higher grade duties during participation in training program. Employee's promotions are found to be in accord with program's regulations and his claim is denied.

This is a reconsideration of our Claims Division settlement of November 10, 1977, which disallowed the claim of Mr. Findlay McKay, a civilian employee of the Department of the Army, Detroit District, Corps of Engineers, for a pay adjustment in connection with his participation in a training and development program given by his employer.

Mr. McKay participated in the Corps of Engineers' Training and Development Program for Hydroelectric Power Plant Personnel. On October 29, 1969, he assumed the position of Power Plant Operator-Trainee under a formal training program. He received progressive promotions, leading to a promotion to Power Plant Operator (WG-11) on April 2, 1972. Thereafter, he was assigned to the position of Power Plant Operator Foreman-Trainee (WG-11), on September 3, 1972, and was promoted to Power Plant Operator Foreman (WG-14), on August 5, 1973.

Mr. McKay claims that he is entitled to two temporary promotions with backpay for two periods under our Turner-Caldwell decisions, B-183086, 55 Comp. Gen. 539 (1975), affirmed 56 Comp. Gen. 427 (1977). He contends that as a trainee, during the period from October 29, 1969, to April 2, 1972, he was often given full responsibility for the duties of a Power Plant Operator. He also contends that he was eligible for promotion to foreman during the period from September 3, 1972, to August 5, 1973, and was often given full responsibility for such position. Thus, he claims entitlement to a pay adjustment for both periods, under the authority of ER 350-2-400 (formally 690-2-513, Change 3, 31 July 1968).

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We note, in passing, that the Settlement Certificate (2-2705091) of November 10, 1977, incorrectly stated that the claim was first received in the General Accounting Office on June 2, 1977. In fact, Mr. McKay's claim was received on July 8, 1976.

Regulation ER 350-2-400, relied on by the claimant, is the applicable regulation for the training program mentioned above. In reference to the first period of October 29, 1969, to April 2, 1972, ER 350-2-400-8b(3) provides for periodic promotions upon the successful completion of successive phases of the program. With regard to these periodic promotions, the record shows that they were timely given to Mr. McKay. The record also shows that the duties assigned to him were consistent with the program's plan to provide for on-the-job training in the field of operation. See ER 350-2-400(5)b. Therefore, Mr. McKay's claim for the first period is denied.

In determining Mr. McKay's promotion eligibility status during the second period of September 3, 1972, to August 5, 1973, consideration must be given to ER 350-2-400-6a(2), which is entitled: "Training at Journeyman Level and Above." It provides in pertinent part:

"* * * When additional training at the W-11 or equivalent level is required, as outlined herein, it will be made a condition of employment, to provide for the development of operators to the S-08 level at the required degree of proficiency. The prescribed training period for promotion from the W-11 or equivalent level to shift operator shall not be less than six months nor more than one year * * *" (Emphasis added.)

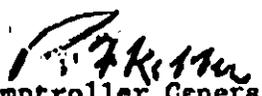
The agency advises us that Mr. McKay exceeded the prescribed maximum time limitation of 1 year on April 2, 1973, and therefore may be entitled to backpay under Turner-Caldwell from July 31, 1973 (the 121st day after April 2, 1973), to August 5, 1973. However, the agency also states that Mr. McKay did not satisfy the last requirement under the training program for promotion to W-14 (passing the required examination) until May 25, 1973. Thus, even though the training period did exceed 1 year, his promotion eligibility would nevertheless be determined by his

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own rate of progress in obtaining a satisfactory grade on the required examination. See ER 350-2-400-8g(4) and 8g(1). Since Mr. McKay was a trainee and had not satisfied the qualification requirements for promotions to WG-14 until May 25, 1973, he was not entitled to a temporary promotion to that position prior to that date.

Our Turner-Caldwell decisions only apply to details of more than 120 days to higher grade positions. Moreover, a person otherwise eligible for remedy under Turner-Caldwell must satisfy the requirements for a retroactive temporary promotion. 56 Comp. Gen. 427, 431 (1977). Since the period of Mr. McKay's promotion eligibility began on May 25, 1973, and he was promoted on August 5, 1973, a period of less than 120 days he would not be entitled to corrective action under Turner-Caldwell even if he could establish that he was in fact detailed to the higher level position during that period.

Accordingly, we sustain the action of our Claims Division in disallowing Mr. McKay's claim.


Deputy Comptroller General
of the United States