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DECISION



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

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FILE: B-193348

DATE: April 10, 1979

MATTER OF: Robert C. Klick - [Claim for Retroactive Promotion and Backpay *incident to Employment With Department of Navy*]

- DIGEST: 1. Grade GS-13 civilian employee of the Department of the Navy, who between September 1975 and September 1977 was assigned duties previously performed by his grade GS-14 supervisor after the supervisor's position was abolished on August 31, 1975, is not entitled to a retroactive promotion to grade GS-14 with backpay for the period September 1975-September 1977, since Federal employees are entitled only to the salaries of the position to which they are actually appointed regardless of the duties performed. United States v. Testan, 424 U.S. 392 (1976).
2. The principles set forth in 55 Comp. Gen. 539 (1975) and 56 Comp. Gen. 427 (1977), concerning the promotion of Federal employees on official temporary details to higher grade level positions, have no application to a claim for retroactive promotion by an employee who was never officially detailed to an existing, established, classified higher grade position.

This action is in response to correspondence received from Mr. Robert C. Klick, 30 North Road, Mechanicsburg, Pennsylvania 17055, in which he requested reconsideration of Settlement Certificate Z-2802219 dated July 25, 1978, issued by our Claims Division, disallowing his claim for a retroactive promotion from grade GS-13 to grade GS-14, with backpay, for the period September 3, 1975, to September 30, 1977, incident to his employment with the Department of the Navy.

In August 1975, Mr. Klick held the position of Supervisory Procurement Agent, grade GS-13, with the Ammunition Buying Branch, Purchase Division, Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania. It is indicated that at about this time the Ammunition Buying Branch underwent a reorganization. The reorganization was apparently undertaken due to the pending transfer of certain of the branch's ammunition procurement functions to the Department of the Army under a Department of

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Defense Single Service Manager Agreement. However, it is further indicated that the actual transfer of functions from the Navy to the Army was not accomplished until September 30, 1977.

Prior to the reorganization, Mr. Klick's immediate supervisor was a Mr. Joseph Minahan, who held the position of Assistant Head, Ammunition Buying Branch, Purchase Division, grade GS-14. Under the reorganization, Mr. Minahan's position was abolished effective August 31, 1975, and Mr. Minahan was reassigned to a different position in another branch of the Purchase Division.

On September 3, 1975, Mr. Klick was verbally told by Lieutenant Commander Joseph Walton, Head of the Ammunition Buying Branch, to take over Mr. Minahan's previous responsibilities. Mr. Klick then began performing the duties of the abolished grade GS-14 position of Assistant Head, Ammunition Buying Branch, although he remained classified as a grade GS-13 Supervisory Procurement Agent. On September 2, 1976, the position of Assistant Head, Ammunition Buying Branch, was reestablished under a revised position description at the grade GS-13 level, and Mr. Klick was given the new post. After the transfer of the branch's functions to the Army on September 30, 1977, Mr. Klick's position was classified as a Supervisory Contract Negotiator, grade GS-13.

In the course of these various transactions, Mr. Klick did not file a classification appeal with the Department of the Navy or the Civil Service Commission. He did, however, eventually file a claim with the Department of the Navy for a retroactive promotion to grade GS-14 with backpay. In essence, he claimed that he had been assigned to perform the identical duties that Mr. Minahan had performed prior to August 31, 1975, and that he should therefore have also been classified and paid at the grade GS-14 level. On April 21, 1978, Navy authorities denied the claim, even though they acknowledged that the personnel actions had been irregular, particularly since Lieutenant Commander Walton should not have told Mr. Klick to perform the duties of a position that had been abolished.

Mr. Klick disagreed with the Navy's denial of his claim and submitted the matter to the Claims Division of this Office.

However, as previously indicated, our Claims Division also disallowed his claim on July 25, 1978, essentially for the reason that a Federal employee's right to pay is determined by the position he holds rather than the duties he performs. In that regard, it was noted in the settlement that no established, classified grade GS-14 position existed in the Ammunition Buying Branch after August 31, 1975, to which Mr. Klick could have been appointed or detailed.

Mr. Klick has questioned the correctness of the Claims Division settlement. In substance, he points out that the reorganization of the Ammunition Buying Branch in August 1975 occurred long before the transfer of its functions to the Army on September 30, 1977. While he recognizes that the grade GS-14 position of assistant branch head was officially abolished in August 1975, he contends that the position still existed for all practical purposes until the actual transfer of the branch's functions to the Army on September 30, 1977. He suggests that since he was assigned to perform the duties of the position, he should have been classified and paid at the grade GS-14 level. He also suggests that even though he remained classified as a grade GS-13 employee, his assignment to act as the assistant branch head should properly be regarded as an extended detail to a higher grade level position, and that he should therefore be entitled to a retroactive promotion in accordance with Comptroller General decision B-183086, reported at 56 Comp. Gen. 427 (1977).

The general rule long followed by this Office and the courts of the United States in cases of this nature is that an employee of the Government is entitled only to the salary of the position to which he is actually appointed, regardless of the duties he performs. When an employee performs duties normally performed by one in a grade level higher than the one he holds, he is not entitled to the salary of the higher grade level until such time as he is promoted to that grade. United States v. McLean, 95 U.S. 750 (1877); Coleman v. United States, 100 Ct. Cl. 41 (1943); Dianish v. United States, 183 Ct. Cl. 702 (1968); 52 Comp. Gen. 631 (1973); and Matter of Elizabeth McLaughlin, B-186556, July 27, 1976. In Coleman v. United States, *supra*, a claimant sued to recover money allegedly owed him because he had been required to perform duties at a grade level higher than the one he held. The Court of Claims stated:

"There are innumerable instances in the Government service where employees of a lower classification perform the duties of a higher classification * * * The salaries fixed by Congress are the salaries payable to those who hold the office and not to those who perform the duties of the office. One may hold the office only by appointment by his superior, and the law vests in the superior the discretion as to whether or not appointment to the office shall be made. Where the plaintiff has received the salary of the office to which he is appointed he has received all to which he is entitled under the law.* * *" 100 Ct. Cl. at 43. (Emphasis supplied.)

The classification of positions in the Government is now controlled by 5 U.S.C. §§ 5101-5115 (1976), under which the Office of Personnel Management, formerly the Civil Service Commission, is empowered to prescribe regulations and engage in supervisory review of an agency's classifications. An employee who wishes a review of the grade of his position may file a classification appeal at any time, either with the employing agency or the Commission. In that connection, 5 U.S.C. § 5101(1)(A) does provide that in the classification of positions, "the principle of equal pay for substantially equal work will be followed." However, neither that provision nor any other provision regarding classification creates a right to backpay for a period of improper classification, nor does it change the long established rule that an employee is not entitled to the benefits of a position until he has been duly appointed to it. United States v. Testan, 424 U.S. 392 (1976).

Hence, Mr. Klick was not entitled to a grade GS-14 salary for the period September 3, 1975, to September 30, 1977, simply on the basis that he performed duties commensurate with those previously performed by a grade GS-14 employee, since he was never officially appointed or promoted to the higher grade. If he believed he was improperly classified at the time, an appropriate remedy was available to him through the means of the classification appeal. It may be that had he submitted such an appeal, he would then have secured a reclassification of his position at the grade GS-14

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level and prospective entitlement to the grade GS-14 salary. However, he did not file a classification appeal, and the appropriate Navy or Civil Service Commission authorities were thus not afforded an opportunity at the time to investigate the matter and issue a formal ruling pursuant to such an appeal.

Finally, Mr. Klick has suggested that even though he was never appointed or promoted to grade GS-14 during the period September 3, 1975-September 30, 1977, his duty assignments during that period should be regarded as a detail to a grade GS-14 position, and he should therefore be awarded a retroactive promotion in accordance with Comptroller General decisions. A detail is the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to his regular duties at the end of the detail. Federal Personnel Manual, chapter 300, subch. 8, para. 8-1. In 55 Comp. Gen. 539 (1975) and 56 Comp. Gen. 427 (1977), it was held that an employee officially detailed to an established, classified, higher grade position for more than 120 days without Civil Service Commission approval, is entitled to a retroactive temporary promotion with backpay for the period beginning with the 121st day of the detail until the detail is terminated, provided the employee was otherwise qualified and could have been promoted into the position at that time.

In the present case, the established, classified grade GS-14 position of Assistant Head, Ammunition Buying Branch, was officially abolished on August 31, 1975, and Mr. Klick could not thereafter have been "detailed" to that position, since it no longer existed. Thus, Mr. Klick was not officially detailed to any existing, established, classified grade GS-14 position. Compare 57 Comp. Gen. 767 (1978); Matter of Donald P. Konrady, B-193555, January 26, 1979.

Accordingly, the settlement of our Claims Division is sustained.


Deputy Comptroller General
of the United States