

PL II

DECISION



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

10,715

FILE: B-195020

DATE: July 11, 1979

MATTER OF: Ms. Cathy G. Pitts

DIGEST: An employee of the Government was the incumbent of a position which was regraded upward incident to an agency position reclassification audit. She was retained in that position beyond the reasonable time period defined in 53 Comp. Gen. 216 (1973). While an agency must within a reasonable time, promote an individual, if qualified, or remove him from the position, where the individual is not qualified for promotion temporary retention beyond the time period alone does not serve as a basis for retroactive temporary promotion and backpay.

This action is in response to correspondence requesting review of the claim of Ms. Cathy G. Pitts, for retroactive temporary promotion and backpay for the period June 1, 1977, to December 31, 1977, incident to her employment with the Department of the Army.

This matter was the subject of a settlement by our Claims Division dated April 10, 1979, which disallowed her claim for the reason that she was not qualified for promotion to the position in question.

The file shows that Ms. Pitts was employed in the position of Supply Clerk, grade GS-3. On August 23, 1977, as a result of a position classification survey, the position which she occupied was reclassified to the GS-5 level. In October 1977 the position was announced under existing competitive procedures. Ms. Pitts applied for the position, but was not rated as one of the qualified candidates due to her lack of required specialized experience.

Ms. Pitts was the incumbent prior to reclassification and she continued performing the duties of the position until January 1, 1978, when she was offered and accepted reassignment to another position as Supply Clerk, GS-3.

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B-195020

The record is silent as to why Ms. Pitts was not reassigned timely nor is there any indication of a change in procedure designed to preclude reoccurrence of such misassignments. Thereafter she made claim for the difference in compensation because she performed the duties of the higher grade position, but her claim was administratively disallowed. In response, Ms. Pitts contends that she is entitled to a retroactive temporary promotion and backpay since she was allowed to continue performing the duties of that position after reclassification and that her performance was rated satisfactory.

The general rule in cases of this nature is that an employee of the Government is entitled only to the salary of the position to which actually appointed, regardless of the duties actually performed. When an employee performs duties normally performed by one in a grade level higher than the one held, no entitlement to the salary of the higher level exists until such time as the individual is actually promoted to that level. See United States v. McLean, 95 U.S. 750 (1977); Morey v. United States, 35 Ct. Cl. 603 (1900); Jackson v. United States, 42 Ct. Cl. 39 (1906); Dianish, et al. v. United States, 183 Ct. Cl. 702 (1968); and 52 Comp. Gen. 631 (1973).

There are, however, some exceptions to the general rule, one of which was the subject of decision 53 Comp. Gen. 216 (1973). In that case an employee who was the incumbent of a position reclassified from a grade GS-12 to a grade GS-13 level, made claim for retroactive promotion and salary differential between those grades. The record showed that he was qualified for the promotion, but the administrative office failed to promote him timely. We pointed out that when a position has been reclassified to a higher grade an agency must, within a reasonable time, either promote the incumbent, if qualified, or remove him. It was ruled that reasonable time was to be considered as expiring at the beginning of the fourth pay period following the date of the reclassification action.

B-195020

The question in the present case involves whether Ms. Pitts was qualified for promotion. Under the then Civil Service regulations, an individual, in order to qualify for advancement to Supply Clerk, GS-4/5, must have 1 year of general experience and 2 years of special experience or in lieu of a portion thereof, have achieved a certain level of education. Under this criteria, it was administratively determined that Ms. Pitts did not become qualified for promotion to grade GS-5 until May 1978, 5 months after she was reassigned from the position in question. Since Ms. Pitts could not be promoted at any time between August 23, 1977, and December 31, 1977, the fact that she was not reassigned from that position until January 1, 1978, well after the close of the beginning of the fourth pay period following reclassification of the position, does not serve as a basis for allowing her claim.

Accordingly, the action taken by our Claims Division is sustained.


Deputy Comptroller General
of the United States