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PLM-I



DECISION

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

FILE: B-195034

DATE: November 27, 1979

MATTER OF: Gloria J. White - [Claim for Retroactive Temporary
Promotion and Backpay]

- DIGEST:**
1. Employee claims retroactive temporary promotion and backpay for performing duties of a new higher graded position. Claim may not be allowed since the position was not classified until March 7, 1978. Period from then to June 18, 1978, when detail ended, was less than required 120-day period needed for retroactive temporary promotion under Turner-Caldwell, 55 Comp. Gen. 539 (1975).
 2. Matters relating to allegations of improper position classification including delays in processing request for position reclassification are for employing agency and Office of Personnel Management, not GAO since GAO has no authority to settle claims on any basis other than agency or OPM classification. See cases and regulations cited.

Ms. Gloria White, a civilian employee of the Department of the Army, requests reconsideration of her claim for retroactive temporary promotion and backpay. The claim was denied by our Claims Division in Settlement Certificate No. Z-2807582, dated December 19, 1978. AC 00020

Ms. White, who during the period in question occupied the position of a GS-3, clerk-typist, alleges that she was detailed to an "unevaluated statement of duties" on August 1, 1977, and continued to perform such duties through June 18, 1978. During this period the position represented by the statement of duties was evaluated and, effective March 7, 1978, the position was established pursuant to formal classification at the GS-4 level. Under these circumstances Ms. White contends she is entitled to a temporary promotion and backpay in accordance with the legal reasoning set forth in Comptroller General decisions rendered in Matter of Turner-Caldwell, 55 Comp. Gen. 539 (1975), and Matter of Reconsideration of Turner-Caldwell, 56 Comp. Gen. 427 (1977).

In the Turner-Caldwell case, we held that employees detailed to higher grade positions for more than 120 days, without Civil Service

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Commission (now Office of Personnel Management) approval, are entitled to retroactive temporary promotions with backpay from the 121st day of the details until they are terminated. In affirming the Turner-Caldwell case at 56 Comp. Gen. 427, supra, we pointed out that the employee must satisfy the requirements for a retroactive promotion. See also Federal Personnel Manual (FPM) Supplement 990-2, Book 550, Subchapter S8-6c(e), June 16, 1977. In this connection we have held that to qualify for backpay under the Turner-Caldwell rationale the detail must be to an established higher grade position and not to a position not yet officially classified. See Matter of Helen Mansfield, B-192765, May 9, 1979, and cases cited therein. In addition, the Civil Service Commission issued implementing guidance in CSC Bulletin No. 300-40 dated May 25, 1977, which provides in paragraph 4 that: "For purposes of this decision, the position must be an established one, classified under an occupational standard to a grade or a pay level." [Italics in original.]

In view of this authority, it is clear that Ms. White only served in an officially higher classified position from March 7, 1978, until June 18, 1978; and thus, she did not serve the 120 day period necessary for a temporary retroactive promotion with backpay.

Ms. White's appeal to this Office also contends that she has been penalized by the agency's alleged inefficiencies in scheduling and performing the desk audit which resulted in the establishment of the GS-4 level position on March 7, 1978, in which she served from August 1, 1977, through June 18, 1978.

In United States v. Testan, 424 U.S. 392 (1976), a case involving the issue of entitlement of an employee to backpay for errors in position classification levels, the Supreme Court ruled that neither the Classification Act nor the Back Pay Act creates a substantive right in the employee to backpay for the period of any claimed wrongful classification. This is true even where an individual is occupying a position at one grade level and may be performing duties which would be performed by an employee classified a higher grade. Matter of Valerie J. Goodwin, B-194125, May 30, 1979. Ms. White's complaint regarding delays in the classification of her position was properly for resolution by her agency and the Civil Service Commission and not by the General Accounting Office. See Matter of J.E. Skowronski, B-190442, April 13, 1978. The effective date of the classification action by the agency may not be made retroactively effective. Matter of Cunningham, 55 Comp. Gen. 1062 (1976).

B-195034

As a result, Ms. White may not gain entitlement to a retroactive promotion on the basis of any claim that she was misclassified or performed duties normally reserved to employees in higher grade classification, or experienced administrative delays in the processing of a request for reclassification.

Accordingly, the disallowance of Ms. White's claim is affirmed.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States