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DECISION

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

FILE: B-196259

DATE: January 28, 1980

MATTER OF: Truman L. Duhart - Retroactive Temporary Promotion
and Backpay

DIGEST:

1. Civilian employee of the Department of the Air Force serving in a WG-08 position claims retroactive temporary promotion and backpay incident to performing higher graded duties of a WG-10 position. Claim is denied where employee has failed to provide sufficient evidence to establish that he was officially detailed to the higher-graded position and that he performed the full range of duties of that higher-graded position.

Mr. Truman L. Duhart requests reconsideration of his [claim for retroactive temporary promotion and backpay] which was disallowed by our Claims Division on September 26, 1978. For the reasons which follow we are sustaining the adjudication of our Claims Division.

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Mr. Duhart, a civilian employee of the Department of the Air Force, is claiming the difference in pay between prevailing rate positions established at WG-08 and WG-10 for the period April 1, 1975, through July 2, 1977. During this period, Mr. Duhart claims he was performing duties of the higher graded WG-10 position although he was assigned to a WG-8 position. His Civilian Personnel Office denied his claim on January 13, 1978, because there was no supervisory verification that he performed duties which could be allocated to the WG-10 level. Although Mr. Duhart's position was not audited during the period concerned, the Fiscal Year 1975, 1976, and 1977 personnel surveys conducted in his section all contained supervisory certification that Mr. Duhart's WG-08 position description was accurate. Subsequently our Claims Division disallowed Mr. Duhart's claim finding that he had failed to provide sufficient evidence to show that he had been officially detailed to a higher-graded position.

In support of his present appeal, Mr. Duhart has submitted copies of facility work order sheets which appear to demonstrate the level of duties which Mr. Duhart performed during the period of his claim. Mr. Duhart contends that the performance of these assignments evidences the fact that he was detailed to a WG-10

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position while receiving WG-08 level pay. While this range of documentary evidence may demonstrate that Mr. Duhart performed a variety of assignments, and that a portion of those assignments may well have been indicative of WG-10 level duties, such evidence is nevertheless insufficient to establish that Mr. Duhart was officially detailed to and performed the entire range of duties of the higher-grade position during the period of his claim.

We have held that employees who are detailed to higher-grade positions for more than 120 days without Civil Service Commission (now Office of Personnel Management) approval are entitled to retro-active temporary promotions with backpay for the period beginning with the 121st day of the detail until the details are terminated. Matter of Everett Turner and David L. Caldwell, 55 Comp. Gen. 539 (1975) and Reconsideration of Everett Turner and David L. Caldwell, 56 Comp. Gen. 427 (1977). Federal Personnel Manual (FPM) Bulletin No. 300-40, May 25, 1977, was issued by the Civil Service Commission in order to provide additional information to assist agencies in the proper application of these decisions.

Paragraph 4 of the FPM Bulletin defines a detail as 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. Paragraph 8F of the FPM Bulletin requires agencies - in accordance with FPM Supplement 296-31, Book II, Subchapter S3-13, to record details in excess of 30 calendar days on Standard Form 52 or other appropriate form and to file it on the permanent side of the employee's Official Personnel Folder. However, in the absence of this form of documentation, paragraph 8F further allows the employee to provide other forms of acceptable proof of his detail. Such acceptable documentation includes (1) official personnel documents or official memoranda of assignment (2) a decision under established grievance procedures, or (3) a written statement from the person who supervised the employee during the period in question, or other management official familiar with the work, certifying that to his or her personal knowledge the employee performed the duties of the particular established, classified position for the period claimed. Mr. Duhart's evidentiary contention that he was detailed during the period of his claim must be tested against these prescribed criteria. See Matter of Edward M. Scott, B-192099, November 8, 1978.

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There are no official records of any detail of Mr. Duhart to any WG-10 position during the period of his claim. Nor is the detail established by any applicable grievance decision. Finally, there is no certification from Mr. Duhart's immediate supervisor or other management official that Mr. Duhart performed the entire range of duties of the higher-grade position during the period of the claim. Thus, Mr. Duhart has failed to meet the burden of proof required to justify an award of backpay under our determination in Turner-Caldwell, supra. See Matter of Loretta T. Smith, September 21, 1979, and cases cited therein.

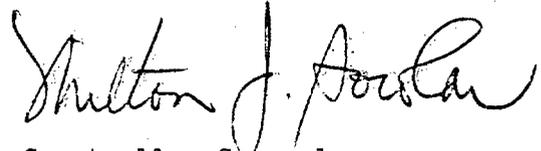
As was noted in the settlement of our Claims Division, a detail does not occur merely through an employee's performance of a set of duties, but requires assignment of the employee to a particular position. We have held that even where an employee performs work which is "substantially equal" to that of a higher-grade position, such work does not constitute a detail to a higher-grade position, but is only an accretion of duties. Matter of Patrick J. Fleming, B-191413, May 22, 1978, September 19, 1978. The general rule in cases involving an accretion of duties is that an employee is entitled only to the salary of the position to which he has been appointed regardless of the duties he may perform. Matter of Francis W. McConnell, October 3, 1979, and court cases cited therein.

This principle was confirmed 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 an employee is only entitled to the salary of the position to which appointed and 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.

All claims are considered on the basis of the written record only, and the burden of proof is on the claimant to establish the liability of the United States and the claimant's right to payment. 4 C.F.R. § 31.7 (1979). In the absence of sufficient documentation establishing that Mr. Duhart was officially detailed to perform the duties of the higher-graded position, there is no legal basis upon which his claim may be allowed.

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Accordingly, the action taken by our Claims Division disallowing Mr. Duhart's claim for retroactive promotion and backpay is sustained.

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

For the Comptroller General
of the United States