

13028 PLM-11  
Mr. Browne



**DECISION**

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

FILE: B-195139

DATE: March 4, 1980

MATTER OF: Glen D. Miller

**DIGEST:** An employee of the Department of the Army at Fort Ritchie, Maryland, [claims <sup>for</sup> retroactive temporary promotion and backpay] for performing the duties of Arts and Crafts Director from November 1975 until October 1977. The Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 Comp. Gen. 427 (1977), on which the claim is based, held that an employee must satisfy the requirements for retroactive temporary promotion before it can be granted. Record shows this employee did not meet education or experience requirement for promotion to position to which he was detailed. Claim is denied. See B-187032, November 30, 1977.

DLG#601

By letter dated May 22, 1979, Mr. Glen D. Miller, through his authorized representative, appealed Certificate of Settlement No. 2786531, issued April 17, 1979, which denied his claim for a retroactive temporary promotion and backpay based on our decision 56 Comp. Gen. 427 (1977). Mr. Miller is an employee of the Department of the Army whose station is Fort Ritchie, Maryland.

The record shows that Mr. Miller, a GS-7 Recreation Specialist, was assigned the duties of Arts and Crafts Director, a GS-9 position, from January 1975 until October 18, 1977. On November 7, 1977, he filed a claim for a retroactive temporary promotion from grade GS-7 to GS-9 and backpay for that period. As stated earlier, his claim was denied by our Claims Division on April 17, 1979. This decision results from his appeal of the action of the Claims Division.

In our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 Comp. Gen. 427 (1977), on which Mr. Miller bases his claim, we held that an employee had to satisfy the requirements for a retroactive temporary promotion before the remedial action authorized by those decisions could be granted. As examples of those requirements we mentioned the time-in-grade requirements of the "Whitten Amendment," 5 U.S.C. 3101 note, and the provisions of 5 U.S.C. 3324 governing appointments to supergrade positions.

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The Civil Service Commission (CSC) (now Office of Personnel Management) promulgated implementing instructions for our Turner-Caldwell decisions in CSC Bulletin 300-40, dated May 25, 1977. In paragraph 8c of the Bulletin, the CSC emphasized that an employee has to satisfy both statutory requirements and the CSC's regulatory requirements in order to be promoted, and it listed examples of requirements that are applicable, including the minimum CSC qualification standards for competitive positions as set forth in CSC Handbook X-118 and X-118C. Thus, in Matter of Leola Y. Harris, B-187032, November 30, 1977, we denied a retroactive temporary promotion and backpay to an employee because she did not meet the minimum requirements in CSC Handbook X-118 for promotion to the position to which she had been detailed.

CSC Handbook X-118, "Qualifications Standards for Positions Under the General Schedule" (now OPM Handbook X-118) contains the following minimum requirements for all positions in the GS-1056 series, the series under which the Arts and Crafts Director position at Fort Ritchie was classified at the time of Mr. Miller's detail:

"A. A full 4-year course in an accredited college or university with major study in a field appropriate to one or more of the fine or applied arts; or

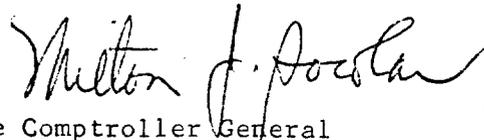
"B. Three years of experience in which the candidate has demonstrated a good knowledge of the materials, tools, and techniques of one or more of the fine or applied arts, and an overall appreciation and understanding of the arts equivalent to that which he would have gained through the education described in A above. This experience may have been gained as an artist, a teacher, or a restorer of art objects; or

"C. Any equivalent combination of A and B above, provided each year of education has included at least 6 semester hours of course work appropriate to the field of art. Appropriate education may be substituted for experience on the basis of 1 year of academic study for 9 months of experience."

The denial of Mr. Miller's claim by the Claims Division was based on a report supplied by the Civilian Personnel Office at Fort Ritchie which indicated that Mr. Miller did not meet the education or experience requirements for the Arts and Crafts Director position. In his appeal Mr. Miller has supplied no evidence to indicate that he met the minimum

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CSC requirements for promotion to that position. The evidence presented by Mr. Miller, which consisted of a letter from a former supervisor, merely indicated that in the opinion of his former supervisor Mr. Miller was qualified for the position of Arts and Crafts Director. Accordingly, the denial of the claim of Glen D. Miller in Certificate of Settlement Z-2786531 is sustained.

A handwritten signature in cursive script, reading "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name and title.

For The Comptroller General  
of the United States

*Memorandum*

March 4, 1980

TO : Director, Claims Division

FROM : *Milton J. Fowler*  
Comptroller General  
For The

SUBJECT: Claim of Glen D. Miller - Z-2786531 - B-195139-O.M.

Returned herewith is file Z-2786531 and a copy of our decision of today, B-195139, which sustains your disallowance of Mr. Miller's claim for a retroactive temporary promotion and backpay.

Attachments