

13446 ALM-11  
Mr. B. B. White



**DECISION**

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

*[Claim for Retroactive Promotion and Backpay]*

FILE: B-196695

DATE: April 14, 1980

MATTER OF: Jeremias Archuleta - Retroactive Promotion  
under Turner-Caldwell for ERDA (AEC)  
Employees

DIGEST: Employee of AEC and its successor,  
ERDA, appeals disallowance of claim  
based on Turner-Caldwell decisions for  
retroactive promotion and backpay.  
Claim is denied as AEC and ERDA,  
the employing agencies, were excepted  
from competitive service as well as  
from General Schedule and thus were  
not subject to the detail provisions of  
subchapter 8, chapter 300 of the Federal  
Personnel Manual. For this reason and  
because AEC and ERDA did not have a  
nondiscretionary agency policy limiting  
details or requiring temporary promotion  
after a specified period of detail, the  
remedy of retroactive temporary promotion  
with backpay is not available.

In a letter dated September 13, 1979,  
Mr. Jeremias Archuleta requested reconsideration  
of Certificate of Settlement No. Z-2815159, issued  
July 31, 1979, which denied his claim for a retro-  
active promotion and backpay based on our Turner-  
Caldwell decisions, 55 Comp. Gen. 539 (1975) and  
56 Comp. Gen. 427 (1977). We have considered his  
letter to constitute an appeal of that action,  
and this decision is the result of that appeal.

The record shows that Mr. Archuleta, a GG-6  
Security Inspector, at the Atomic Energy Commission  
(AEC) in Los Alamos, New Mexico, was assigned the  
duties of Operations Sergeant, a GG-7 position, on  
July 19, 1973. This assignment continued until  
August 31, 1975, when Mr. Archuleta was promoted  
to a GG-7 position. On January 19, 1975, while  
assigned to the GG-7 position, Mr. Archuleta  
became an employee of the Energy Research and  
Development Administration (ERDA), as a result of  
the Energy Reorganization Act of 1974, Public  
Law 93-438. For the record we note that since

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January 1, 1977, Mr. Archuleta has been an employee of the Department of Energy. However, during all portions of the claim he was employed by either AEC or ERDA.

The Claims Division in its action of July 31, 1979, disallowed Mr. Archuleta's claim on the basis that his agency was not subject to applicable Civil Service Commission (CSC) (now Office of Personnel Management) regulations. We uphold that disallowance for the reasons stated below.

Our Turner-Caldwell decisions held that employees detailed to higher-grade positions for more than 120 days without Civil Service Commission approval are entitled to retroactive temporary promotions and backpay for the period beginning with the 121st day of the detail until the detail is terminated. Those decisions were based on an interpretation by the Commission's Board of Appeals and Review (now Appeals Review Board) to the effect that under the provisions of subchapter 8, chapter 300 of the Federal Personnel Manual an agency had no discretion to continue a detail beyond 120 days without CSC approval. Absent such approval, the agency had a mandatory duty to award the employee a temporary promotion if he continued to perform the duties of the higher-grade position.

Mr. Archuleta as an employee of the AEC and ERDA was not subject to the applicable provisions of the Federal Personnel Manual. The AEC and its successor, ERDA, elected to except their employees from the competitive service as well as from the General Schedule under the authority of section 161(d) of the Atomic Energy Act, as amended, 42 U.S.C. 2201(d), and section 106(a) of the Energy Reorganization Act of 1974, Public Law 93-438, 42 U.S.C. 5816(a). Since subchapter 8, chapter 300 of the Federal Personnel Manual applies only to details between positions in the excepted service that are under the General Schedule, the remedy for extended details specified in Turner-Caldwell is unavailable in Mr. Archuleta's case. See Matter of Israel Warshaw, B-194484, September 21, 1979.

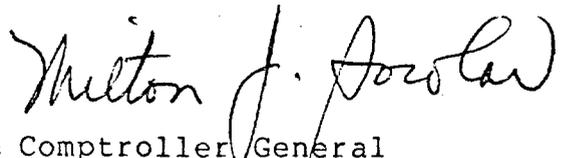
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The AEC and ERDA issued their own regulations governing details. As set forth at paragraph B2b of ERDA (AEC) Appendix 4108, Part VI, those regulations provide:

"Since the use of a detail may contravene sound compensation practices and merit system principles, details should normally be for periods of less than three months."

Unlike the detail provisions of the Federal Personnel Manual, this regulation does not limit the AEC's or ERDA's discretion to continue a detail beyond 3 months, nor do the related provisions of paragraph A4 of that Appendix require the agency to temporarily promote an employee detailed to a higher-grade position for longer than any specified period of time. Compare Matter of Jose Lujan, B-196652, January 11, 1980.

Accordingly, since Mr. Archuleta was not subject to the applicable provisions of the Federal Personnel Manual or to any similar nondiscretionary agency policy, we affirm the action of our Claims Division disallowing Mr. Archuleta's claim for a retroactive temporary promotion and backpay.

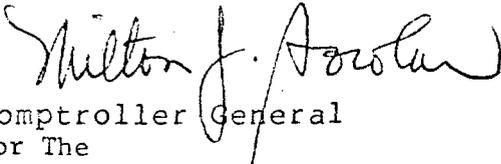


For The Comptroller General  
of the United States

*Memorandum*

April 14, 1980

TO : Associate Director, FGMSD - Claims Group, (Room 5858)

FROM :  Comptroller General  
For The

SUBJECT: Claim of Jeremias Archuleta - Z-2815159 -  
B-196695-O.M.

Returned herewith is file Z-2815159 and a copy of our decision of today, B-196695, sustaining your disallowance of Mr. Archuleta's claim for a retroactive promotion and backpay.

Attachments