

DECISION

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

FILE: B-197333

DATE: April 23, 1980

MATTER OF: Robert M. Schabert - Retroactive Temporary Promotion

DIGEST: Employee of the Department of the Air Force appealed Certificate of Settlement which denied his claim for a retroactive temporary promotion and backpay for period prior to April 9, 1978. Denial is sustained as record shows the duties which employee claims he performed were not classified at higher grade until March 1978 and that employee was promoted to higher grade within 120 days thereafter. Supreme Court in United States v. Testan, 424 U.S. 392 (1976) held there is no remedy for period of wrongful classification under the Classification Act, 5 U.S.C. 5105-5115, or the Back Pay Act, 5 U.S.C. 5596.

By a letter dated November 16, 1979, Mr. Robert M. Schabert appealed the action of our Claims Division in Certificate of Settlement No. Z-2813603, issued June 26, 1979, which disallowed his [claim for a retroactive temporary promotion and backpay] based on our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), and 56 Comp. Gen. 427 (1977).

The record shows that during all portions of the claim Mr. Schabert was an employee of the Department of the Air Force whose duty station was McClellan Air Force Base, California. From before January 25, 1973, Mr. Schabert, a Production Management Specialist, GS-1101-09, had been assigned additional duties which were associated with the Real Property Installed Equipment (RPIE) Removal Program. On December 20, 1977, he submitted an SF 172 to update his personal qualification record. At that time a job audit was conducted and the major duties associated with RPIE were graded at the GS-11 level and added to an existing GS-11 position. On April 9, 1978, he was

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promoted to that position of Production Management Specialist, GS-1101-11. Subsequently, Mr. Schabert filed a claim for a retroactive temporary promotion and backpay from 1967 until his promotion in April 1978. His claim for those periods subsequent to January 25, 1973, not otherwise barred under 31 U.S.C. 71a was disallowed by the Claims Division on the basis that the duties he claims to have performed were not classified at a higher grade until March 1978. Upon his appeal of that portion of the disallowance, we affirm the denial of Mr. Schabert's claim for the reasons stated below.

It is well established that an employee of the Federal Government is entitled only to the salary of the position to which he is appointed regardless of the duties performed. 52 Comp. Gen. 920 (1973). When an employee performs duties which should be classified at a higher grade, he is entitled to the pay of the higher grade only after the position has been reclassified upward to the higher grade and the employee is promoted to it. The Supreme Court in United States v. Testan, 424 U.S. 392 (1976), has held that neither the Classification Act, 5 U.S.C. 5101-5115, nor the Back Pay Act, 5 U.S.C. 5596, creates a substantive right to backpay based on a period of wrongful classification.

While we held in our Turner-Caldwell decisions that an employee who was detailed to the duties of an established higher grade position for more than 120 days without Civil Service Commission (now Office of Personnel Management) approval was entitled to a retroactive temporary promotion beginning with the 121st day of the detail, the remedy provided by Turner-Caldwell is unavailable in wrongful classification situations, since there is no established higher grade position to which the employee could have been detailed. Accordingly, the action of our Claims Division in denying Mr. Schabert's claim is sustained.

Milton J. Rowland

Acting Comptroller General
of the United States