

13743 PLM-II



**DECISION**

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

FILE: B-196227

DATE: May 15, 1980  
REQUEST FOR

MATTER OF: Darryl E. Laxo } Retroactive Temporary  
Promotion ]

**DIGEST:** Navy employee requests retroactive temporary promotion for an overlong detail from grade GS-11 to GS-13 between November 1972 and September 1974. During the employee's detail the position was downgraded from GS-13 to GS-12. Employee was granted a retroactive temporary promotion to grade GS-12 beginning the 121st day after November 12, 1973, the date the position was reclassified. Employee is not entitled to a retroactive temporary promotion to grade GS-13, as he did not meet the qualifications for permanent promotion to the position when it was classified at GS-13.

By a letter dated July 25, 1979, Mr. Darryl E. Laxo appealed the action of our Claims Division (now Claims Group, FGMSD) in Settlement Certificate No. Z-2632753, issued May 22, 1979, which disallowed his claim, based on our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), and 56 Comp. Gen. 427 (1977), for a retroactive temporary promotion from grade GS-11 to GS-13 and backpay. Mr. Laxo's claim is for the period November 3, 1972, until September 23, 1974. For the record we note that Mr. Laxo, who is an employee of the Mare Island Naval Shipyard, Vallejo, California, was assigned the duties of Project Coordinator for Deep Submergence Vehicles by Mr. P.A. Green, Assistant Chief Design Engineer for Ocean Engineering, in a memorandum dated November 3, 1972. This assignment terminated on September 23, 1974.

In denying Mr. Laxo's claim for promotion to grade GS-13, the Claims Division relied upon an administrative report supplied by the Navy which indicated that Mr. Laxo had been performing the duties of a General Engineer, GS-801-12. The report further indicated that the position of General Engineer, whose incumbent is Project Coordinator

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for Deep Submergence Vehicles, was established by P.D. No. 280-17 on November 27, 1973, and that Mr. Laxo had been temporarily promoted to that position beginning August 22, 1974. Therefore, in its action of May 22, 1979, the Claims Division granted Mr. Laxo a retroactive temporary promotion to grade GS-12 beginning the 121st day after November 27, 1973, the date on which the General Engineer position was established.

In his appeal Mr. Laxo recognizes that he would be barred by the Whitten Amendment from promotion from grade GS-11 to GS-13 during the first year of his detail, that is, November 1972 until November 1973. However, he requests a promotion to GS-12 for that period and promotion to grade GS-13 from November 1973 until September 1974. In examining the record we note that the position to which Mr. Laxo was detailed, Project Coordinator for Deep Submergence Vehicles, was classified as Naval Architect, GS-871-13, on the date his detail began, November 3, 1972. As indicated earlier, this position was subsequently classified as General Engineer, GS-801-12, by P.D. 280-17 on November 27, 1973, and Mr. Laxo was retroactively temporarily promoted to it on the 121st day after November 27, 1973.

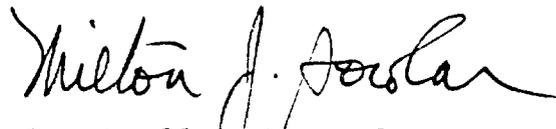
In our Turner-Caldwell decisions, supra, on which Mr. Laxo bases his claim, we held that an employee had to satisfy the requirements for a retroactive temporary promotion before the remedial action authorized by those decisions could be granted. As examples of those requirements we mentioned the time-in-grade 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.

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

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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 qualification standards Handbook X-118 and X-118C. Thus, in Matter of Glen D. Miller, B-195139, March 4, 1980, and Matter of Leola Y. Harris, B-187032, November 30, 1977, we denied retroactive temporary promotions and backpay to employees because they did not meet the minimum requirements in CSC Handbook X-118 for promotion to the position to which they had been detailed.

In order for Mr. Laxo to be eligible to be retroactively promoted to the GS-871-13 position, he must have been eligible for permanent promotion to that position, as is required by our decisions Miller and Harris. However, the Civilian Personnel Office at Mare Island Naval Shipyard indicates that Mr. Laxo did not meet the experience requirements contained in CSC Handbook X-118 for promotion to the GS-13 Naval Architect position. Accordingly, Mr. Laxo's claim for a retroactive temporary promotion to grade GS-13 is denied, and the action of the Claims Division in granting Mr. Laxo a retroactive temporary promotion to GS-12 on the 121st day after the position was classified at grade GS-12 is sustained.



Acting Comptroller General  
of the United States