

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

FILE: B-197206

DATE: August 12, 1980

MATTER OF: Joyce R. Morrison - Backpay and Detail  
to Higher Grade

- DIGEST:
1. Federal Power Commission (FPC) employee was transferred with her position to Department of Energy (DOE) where she continued to perform same duties until detailed to a transferred higher-grade position. During detail the higher-grade position was reevaluated and reclassified without significant change as DOE position. The employee is entitled to a retroactive temporary promotion and backpay for period of detail beyond 120 days. Detail was not one to unclassified duties merely because former FPC position had not been reclassified as DOE position and was not interrupted by reclassification, but was a continuous detail to same position.
  2. By special agreement Civil Service Commission authorized Department of Energy to detail some employees for up to 1 year during organization of the Department, subject to certain specified conditions. Agreement does not apply to employee's detail to higher-grade position because Department of Energy did not comply with conditions of agreement.
  3. By FPM Bulletin 300-48, effective February 15, 1979, Office of Personnel Management (OPM) delegated authority to agencies to detail employees to higher-grade positions without prior OPM approval (1) for up to 1 year during major

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reorganizations as determined by the agencies; and (2) for up to 240 days in other situations. Where detail exceeded 120 days and right to backpay vested under Turner-Caldwell decisions prior to effective date of bulletin, employee is entitled to backpay up to effective date of bulletin. On and after effective date, however, entitlement to backpay is governed by bulletin's provisions.

This decision is rendered in response to a request by the Director, Headquarters Personnel Operations Division, Department of Energy (DOE), concerning the claim of Joyce R. Morrison for retroactive temporary promotion with backpay for the period from July 16, 1978, to October 7, 1979. Her claim is based on Turner-Caldwell 55 Comp. Gen. 539 (1975), affirmed 56 id. 427 (1977), and a line of implementing decisions. These decisions hold that when an employee is detailed to a classified position in a higher-grade position for a period in excess of 120 days without prior Civil Service Commission (CSC) or Office of Personnel Management (OPM) approval the employee is entitled to a retroactive temporary promotion and backpay for such period; provided he or she meets the qualification and other requirements for such a promotion.

#### FACTS

Ms. Morrison was employed by the Federal Power Commission (FPC) as a Public Information Officer, GS-1081-14, FPC Position No. 5486. The organizational title of her position was Assistant Director of Public Information. Her immediate superior was Mr. William L. Webb who occupied the position of Public Information Officer GS-1081-15, FPC Position No. 5074. The organizational title of his position was Director of Public Information. On October 1, 1977, Ms. Morrison and Mr. Webb, along with their positions, were transferred to the Federal Energy Regulatory Commission, Department of Energy, by the Department of Energy Organization Act Pub. L. 95-91, approved August 4, 1977, 91 Stat. 565. Among other things, this Act transferred most of the

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functions and personnel of FPC to the new commission. (See sections 402 and 701 of the ACT). The Personnel Action (Standard Form 50) transferring Mr. Webb contained this notation under Item 30: Remarks: "TYPE OF APPOINTMENT, POSITION, OCCUPATION CODE GRADE AND SALARY REMAIN UNCHANGED." However the organizational title of his position was changed from Director of Public Information to Director of the Office of Public Information.

On July 16, 1978, Mr. Webb vacated his position and, effective that same date, Ms. Morrison was appointed Acting Director of the Office of Public Information by the Executive Director of the Federal Energy Regulatory Commission (FERC). Ms. Morrison contends that she performed the duties of the grade GS-15 Director's position from that date, July 16, 1978, until she transferred to another agency, effective October 7, 1979. During this period, on June 20, 1979, the grade GS-15 Director's position was redescribed and reclassified without substantive change as a DOE position. The Executive Director has certified that Ms. Morrison "performed the full range of duties of the position of Acting Director, Office of Public Information, GS-1081-15" during this period.

DOE acknowledges that Ms. Morrison served as Acting Director of the Office of Public Information for the period claimed. However, it seems to be DOE's position that she was detailed to a classified position in higher grade only from June 20, 1979, the date the grade GS-15 FPC position was reclassified as a DOE position, to her separation on October 6, 1979, or 110 days. While this is not entirely clear, DOE's position appears to be predicated on a theory that all employees transferred with their positions to DOE at its inception on October 1, 1977, were in effect detailed to unclassified duties until their positions were reclassified as DOE positions.

DOE also contends that Ms. Morrison's detail was covered, at least in part, by a special agreement whereby CSC, to facilitate the initial organization of DOE, authorized the detail of some employees for up to 1 year. This agreement required, among other things, that DOE periodically report to CSC the names

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of those being detailed for more than 120 days with an overall justification and that details be recorded in employees personnel records. This agreement applied only to details ending not later than October 31, 1978.

While not mentioned by DOE, another matter which must be considered is the issuance, during the running of Ms. Morrison's detail, of Federal Personnel Manual (FPM) Bulletin No. 300-48, dated March 19, 1979. In this bulletin OPM delegated authority to agencies, effective February 15, 1979, to detail employees to higher-grade positions without prior OPM approval (1) for up to 1 year during major reorganizations as determined by the agencies; and (2) for up to 240 days in other situations.

#### DISCUSSION

Ms. Morrison's detail was not covered by the special agreement between CSC and DOE. As has been pointed out DOE's authority under this agreement was limited by a number of specified requirements, including the requirement that the names of those being detailed for more than 120 days be periodically reported to CSC. There is no evidence that Ms. Morrison's name was ever reported to CSC in connection with this agreement or that any of the other terms of the agreement were complied with in her case. Moreover, this agreement did not cover details after October 31, 1978, and Ms. Morrison's detail extended nearly a year beyond that date. As a result, Ms. Morrison's detail was not subject to the provisions of the agreement.

In the circumstances of this case we find that Ms. Morrison was detailed to a classified position in higher grade from July 16, 1978, to June 20, 1979, for the following reasons. When General Schedule (GS) FPC positions were transferred to DOE on October 1, 1977, they did not lose their status as classified positions, notwithstanding the fact that they were not formally designated as DOE positions until later. The employees who were transferred to DOE with their positions continued to be assigned to classified positions. Employees must occupy positions classified in accordance with the provisions of chapter 51 of title 5, United States

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Code, in order to be paid under the General Schedule. See FPM Chapter 511, paragraph 1-6a, and 5 U.S.C. § 5107. The grade GS-15 position which had been transferred from FPC therefore existed as a classified position in DOE until it was reclassified and, as had been noted, Mr. Webb occupied this position in DOE from October 1, 1977, to July 16, 1978, and was paid on the basis of its classification.

Ms. Morrison's original detail was not terminated and a new one begun by the reclassification of the grade GS-15 FPC position as an FERC/DOE position on June 20, 1979, for the following reasons. As has been previously indicated, the position was redescribed and reclassified without change in title, series, or grade, and without substantive change in duties and responsibilities. Thus, throughout the period from July 16, 1978, to October 7, 1979, Ms. Morrison performed the same classified duties--albeit classified during that period in two separate but substantially identical positions. In somewhat analogous situations it has been held that substance and not form should control and that the continuity of the detail is to be determined by the duties performed. See Marvin R. Dunn, B-192437, September 30, 1978, and William D. Yancy, B-183086, September 7, 1977.

Finally, we must consider the effect of FPM Bulletin No. 300-48. The bulletin is dated March 19, 1979, and states that it is effective February 15, 1979. It does not purport to have any effect earlier than that date. Moreover, FPM Bulletin 300-48 must be considered in light of the nature of the remedy provided by our Turner-Caldwell decisions for overlong details to higher-grade positions. The remedy is a retroactive temporary promotion for the detailed person beginning on the 121st day of the detail. Thus, in the circumstances of Ms. Morrison's case, we conclude that where her continuing detail had exceeded 120 days without prior CSC or OPM approval and a right to backpay under Turner-Caldwell had vested prior to the effective date, the employee is entitled to backpay up to the effective date of the bulletin. However, since the key to Turner-Caldwell is the lack of authority by the agency to detail beyond established limits, entitlement to backpay after the effective date of the bulletin must be based on the new broader limits it established.

Therefore, applying the foregoing to Ms. Morrison, we find that she is entitled to a temporary retroactive promotion with backpay beginning with the 121st day of the detail which began on July 16, 1978, and continuing through February 14, 1979. Her entitlement for the remainder of her detail--February 15, through October 6, 1979, is governed by the provisions of FPM Bulletin No. 300-48. As we have indicated, the issuance of FPM Bulletin 300-48 had a direct and controlling application on Ms. Morrison's status under the continuing detail. In addition, in our discussion of the legal authority under the Turner-Caldwell line of cases, we noted that an employee's entitlement to a retroactive promotion and backpay for an overlong detail is premised on a finding that the agency actually violated Civil Service Commission regulations governing the permissible duration of a detail. In accordance with this reasoning, and in view of the revised regulatory standards contained in the FPM Bulletin No. 300-48, effective February 15, 1979, DOE had the authority to detail employees to higher-grade positions for up to 1 year during a major reorganization. As a result, from and after February 15, 1979, Ms. Morrison's detail would not have violated Civil Service Commission regulations since the detail was under a major reorganization. We find no better evidence of this latter finding than the very descriptive language appearing at the beginning of the Department of Energy Organization Act, Pub. L. 95-91, approved August 4, 1977, 91 Stat. 565, which states as follows:

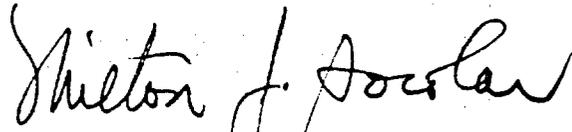
AN ACT

"To establish a Department of Energy in the executive branch by the reorganization of energy functions within the Federal Government in order to secure effective management to assure a coordinated national energy policy, and for other purposes." (Emphasis added.)

Therefore, after February 15, 1979, DOE had the authority to detail Ms. Morrison to the higher-grade position for an additional 245 days without prior OPM approval (1 year or 365 days less the 120 she had already performed the same higher grade duties without compensation) and no additional compensation is due Ms. Morrison.

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Ms. Morrison's claim is to be settled in accordance with the foregoing.

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

For The Comptroller General  
of the United States