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**DECISION**



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

*[Claim For Backpay]* December 1, 1980

FILE: B-198758

DATE:

MATTER OF: Eldon D. Praiswater - Back Pay Claim -  
Reclassification

DIGEST: 1. Civilian employee's claim for backpay due to alleged improper classification of prevailing rate position by Department of Defense is denied. Questions relating to the proper classification of positions are solely within the jurisdiction of the employing agency and the Office of Personnel Management. 5 U.S.C. § 5341 *et seq.* Neither the prevailing rate statute, nor the Back Pay Act, 5 U.S.C. § 5596 (1976), create a substantive right to backpay for periods of wrongful classification. United States v. Testan, 424 US 392 (1976).

2. Record fails to demonstrate that employee's voluntary retirement from Department of Defense during a reduction-in-force was direct result of an unjustified or unwarranted personnel action within the contemplation of the Back Pay Act, 5 U.S.C. § 5596 (1976). The employee has failed to demonstrate that the agency acted improperly or illegally by replacing him upon his early voluntary retirement. Employee's claim for backpay is denied.

This decision is in response to correspondence of Eldon D. Praiswater, which in effect constitutes an appeal from Claims Division Settlement Certificate No. Z-2819257, dated February 20, 1980, which disallowed his claim for backpay. Based upon Mr. Praiswater's correspondence, it appears that his claim stems from an alleged misclassification of his prevailing rate position and from his belief that the Department of Defense acted improperly in employing a replacement for him after he voluntarily retired during an agency reduction-in-force (RIF).

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In 1974, Mr. Praiswater was employed by the Army Home Town News Center as a Printing and Reproduction Equipment Operator, WG-4401-08. During his employment there, Mr. Praiswater requested that his position be upgraded to Printing and Reproduction Equipment Operator, WG-4401-10. Upon review of his claim, both the Army and the Civil Service Commission determined that reclassification of his position to a higher grade was not justified. Subsequently, the Civil Service Commission determined that a major RIF existed in the Department of Defense, and authorized early voluntary retirements for employees of the Department who met certain eligibility requirements. Mr. Praiswater subsequently applied for and obtained a voluntary RIF retirement, which became effective July 12, 1974. Notwithstanding the RIF, the Army posted a vacancy notice relative to Mr. Praiswater's position, and employed a replacement.

It is Mr. Praiswater's contention in essence that the Army's failure to reclassify his position and its action in replacing him during the RIF were erroneous, and therefore he is entitled to the compensation he would have received from the time of his early retirement until he reached the age of 65.

The Civil Service Commission has investigated both of Mr. Praiswater's complaints and has determined that his rights have not been violated. Upon review of this matter by the Fraud Task Force and the Claims Division of this agency, a similar conclusion was reached.

Under the prevailing rate statute, 5 U.S.C. § 5341 et. seq., and its implementing regulations, 5 C.F.R. Part 532, the primary responsibility for matters relating to the classification of a prevailing rate employee's duties rests with the employee's agency and with the Office of Personnel Management (formerly the Civil Service Commission). Furthermore, pursuant to the provisions of 5 U.S.C. § 5346 (1976), OPM has the primary authority and responsibility for the preparation and publication of the job grading standards for positions under the prevailing rate system. Under the

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aforementioned authority, OPM is empowered to review classification actions of an agency and to institute corrective measures when it determines that agency actions are not in conformity with published standards. These corrective actions are binding upon all administrative, certifying, payroll, disbursing, and accounting officials. 5 C.F.R. § 532.703(f) (1980).

It is not, therefore, within the jurisdiction of this Office to resolve questions relating to the proper classification of positions. Under the implementing regulations, it is specifically provided that a position may not be retroactively reclassified to a higher grade except in certain instances which are inapplicable here. 5 C.F.R. § 532.702(b)(11). See United States v. Testan, 424 US 392 (1976).

Upon the Army's refusal to reclassify Mr. Praiswater's position in conformity with his perceptions, the appropriate procedure was to file a classification appeal with his agency, 5 C.F.R. § 532.702, and then with the Civil Service Commission (now OPM). 5 C.F.R. § 532.703. Although the record is not clear whether such an appeal was in fact filed with the Commission, Mr. Praiswater's voluntary retirement from his position now precludes such an action. In view of this fact, and the absence of any other basis upon which this Office would be authorized to grant Mr. Praiswater's request for backpay, his claim cannot be sustained.

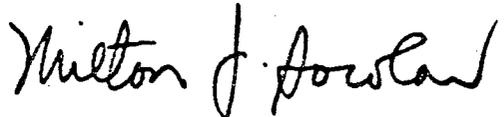
Turning to Mr. Praiswater's contention that his position in the Army Home Town News Center was illegally filled after his voluntary retirement and, as a result, he is entitled to backpay, we find this contention unsupported by the record before us. The Back Pay Act, as codified in 5 U.S.C. § 5596 (1976), and its implementing regulations, 5 C.F.R. Part 550, subpart H, as amended March 25, 1977, provide in essence that, upon the filing of a timely appeal, eligible Federal employees may obtain backpay when an appropriate authority determines that the employee suffered a deprivation of pay or allowances from a unjustified or unwarranted personnel action. 5 C.F.R. § 550.803 (1980). Thus, in

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Mr. Praiswater's situation, the proper procedure for him to have followed to challenge the alleged improper RIF action was to file an appeal to the Civil Service Commission, cf. 5 C.F.R. § 351.901, et. seq., (1980), in order to establish the existence of an unjustified or an unwarranted personnel action. Such a procedure was available to Mr. Praiswater prior to and at the time of his voluntary retirement. 5 C.F.R. § 351.901 (1974).

Although the record suggests that a formal appeal was not in fact filed pursuant to 5 C.F.R § 351.901, Mr. Praiswater's complaints were reviewed by the Commission's Bureau of Personnel Management Evaluation, and by its Office of General Counsel. By letter dated April 15, 1977, the Commission informed Mr. Praiswater that it had "recently conducted a complete review of this matter and by letter dated October 22, 1976, notified you of our conclusion that the Government's actions had been proper."

Accordingly, the determination of our Claims Division denying Mr. Praiswater's claim for backpay is hereby affirmed.



For the Comptroller General  
of the United States