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DECISION

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

FILE: B-195230

DATE: March 5, 1981

MATTER OF: Earl E. McGinty - *Request for* Reconsideration of decision denying claim for extended detail]

DIGEST: Employee, who was detailed from competitive service position to excepted service position is not entitled to remedy under Turner-Caldwell decisions for overlong detail since those decisions apply only to details covered under Federal Personnel Manual, Chapter 300, S8-2. B-195230, January 10, 1980, affirmed.

Mr. Earl E. McGinty requests reconsideration of our decision in B-195230, January 10, 1980, denying his claim for a retroactive temporary promotion and backpay incident to an extended detail.

Mr. McGinty's claim is based on an extended detail from July 1, 1972, to May 25, 1974, from a competitive service position to a National Aeronautics and Space Administration (NASA) excepted service position established under 42 U.S.C. § 2473(b)(2) (1970). Our prior decision held that Mr. McGinty was not entitled to the remedy under our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), affirmed at 56 Comp. Gen. 427 (1977) for two reasons. First, we held that since our Turner-Caldwell decisions apply only to details within the competitive service or the excepted service under the General Schedule, Mr. McGinty's detail would not come within the scope of these decisions. Second, we held that since Mr. McGinty's detail did not comply with Civil Service Commission (CSC) regulations governing appointment of an employee from the competitive to the excepted service, there is no remedy for the overlong detail.

In requesting reconsideration, Mr. McGinty argues that his situation is quite comparable to our Turner-Caldwell decisions, and he questions why his detail does not fall within the scope of our decisions. Mr. McGinty also argues that NASA did comply with CSC requirements governing movement from the competitive to the excepted service.

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

As pointed out in FPM Bulletin No. 300-40, May 25, 1977, the CSC's instruction for securing prior approval for extended details beyond 120 days covers only details within the same agency of employees serving in competitive positions and, in the excepted service, positions under the General Schedule. Extended details outside the scope of the CSC instruction would not violate CSC regulations and, therefore, would not require a remedy under our Turner-Caldwell decisions. Jeremias Archuleta, 59 Comp. Gen. 384 (1980); and Israel Warshaw, B-194484, September 21, 1979. Since Mr. McGinty's detail was outside the coverage of the CSC instruction, there is no remedy available under our Turner-Caldwell decisions.

We held in our prior decision involving Mr. McGinty, B-195230, that his detail did not comply with CSC regulations which prohibit an agency from appointing or converting an employee from the competitive service to the excepted service until the employee has been informed of the nature of the action and he has submitted a written statement that he is leaving the competitive service voluntarily. See FPM Chapter 302, S2-10. Although Mr. McGinty has again supplied a copy of such statements, we note that these statements are dated May 1974, when he was

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appointed to the excepted service position rather than when he was first detailed to the position in 1972. But regardless of the presence or absence of the necessary documentation concerning movement from the competitive to the excepted service, we find no basis to allow Mr. McGinty's claim since his detail did not fall within the scope of our Turner-Caldwell decisions.

Accordingly, we sustain our prior decision denying Mr. McGinty's claim for a retroactive temporary promotion and backpay.



Acting Comptroller General
of the United States