

DECISION

19114
PLM-1
Pool

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

FILE: B-197105**DATE:** August 12, 1981**MATTER OF:** Eugene C. Johnson - Backpay - Detail to Higher Grade - Reconsideration**DIGEST:**

1. Employee of General Accounting Office was detailed to higher-graded position on September 29, 1975. He was transferred with his position to General Services Administration (GSA) on October 12, 1975, and continued to perform the higher-grade duties. Employee is entitled to retroactive temporary promotion and backpay for period of detail beyond 120 days until the position was reclassified downward on July 15, 1976. Evidence in record indicates vacant, higher-graded position was transferred to GSA upon transfer of function. Further, prohibition on temporary promotions for details between agencies is not applicable under these circumstances. B-197105, September 30, 1980, sustained.
2. Grade GS-14 employee of General Accounting Office was detailed to grade GS-15 position on September 29, 1975. Both positions were transferred to General Services Administration on October 12, 1975, as part of a transfer of function, and employee continued to perform the higher-grade duties until grade GS-15 position was reclassified at grade GS-14 level in 1976. Section 202(b) of Pub. L. No. 93-604 authorizing transfer of function protects personnel - as opposed to positions - from reclassification for period of 2 years. Employee continued to be incumbent of position from which detailed, and his permanent position was not reduced in classification or compensation during 2-year period. Personnel protections contemplated by statute have been afforded employee and do not extend to vacant, higher-graded position the duties of which employee performed incident to informal detail.

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In this action we reconsider the claim of Mr. Eugene C. Johnson for a retroactive temporary promotion and backpay based on an overlong detail to a higher-graded position.

In our original decision in Mr. Johnson's case, B-197105, September 30, 1980, we held that where he was detailed as a General Accounting Office (GAO) employee to a higher-graded position on September 29, 1975, transferred with his position to the General Services Administration (GSA) on October 12, 1975, and continued to perform the higher-grade duties, he was entitled to a retroactive temporary promotion and backpay for the period of the detail beyond 120 days until the higher-graded position was reclassified downward on July 15, 1976.

In his request for reconsideration, Mr. Johnson contends that section 202(b) of Public Law No. 93-604 (General Accounting Office Act of 1974, 88 Stat. 1959, 1960, January 2, 1975), which effected the transfer of function from GAO to GSA, precludes agency reclassification of the higher-graded position to which he was detailed for a period of 2 years. Thus, Mr. Johnson believes that he is entitled to retroactive temporary promotion with backpay for the period from the 121st day of detail until some date not earlier than October 1, 1978, rather than the July 15, 1976, date specified in our decision.

Mr. Johnson was employed by the General Accounting Office (GAO) in a position classified as a Supervisory Computer Systems Analyst, grade GS-14. He was also designated as the Deputy Assistant Director, Automated Transportation Audit Systems, Transportation and Claims Division. His supervisor was designated as the Director and occupied a position classified as a grade GS-15, Supervisory GAO Management Auditor. The Director retired on September 26, 1975, and Mr. Johnson assumed his duties on September 29, 1975. However, the General Accounting Office Act of 1974, Pub. L. No. 93-604, 88 Stat. 1959, 1960, transferred the transportation audit function and personnel from GAO to the General Services Administration (GSA). The transfer was effective October 12, 1975.

Mr. Johnson states that he was detailed to the Director's position from the date of his supervisor's retirement in 1975 until October 1, 1978, the date of a transfer of function within GSA. Thus, he contends he was entitled to a temporary promotion and backpay on the basis of our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), and 56 id. 427 (1977).

We held in our Turner-Caldwell decisions that employees officially detailed to established higher-level positions for more than 120 days without Civil Service Commission approval are entitled to retroactive temporary promotions with backpay beginning with the 121st day of the detail until the detail is terminated.

The report from GSA indicates that Mr. Johnson did assume the duties of a classified GAO (GS-15) position prior to the transfer of function and that he remained in an acting capacity over the unit after reporting to GSA. However, the report from GSA also contends that since the grade GS-15 position was vacant at the time of the transfer of function, that position was not transferred to GSA. Thus, GSA argues that Mr. Johnson was not detailed to an established, classified position as required for backpay entitlement under our Turner-Caldwell decisions.

The record before us indicates that the vacant grade GS-15 position was transferred to GSA upon the transfer of function. A document dated October 12, 1975, listing positions transferred to GSA includes the position of Assistant Director, GS-343-15, along with that of Deputy Assistant Director, GS-343-14, Mr. Johnson's position. In addition, when GSA classified the position of Digital Computer Systems Administrator, GS-330-14, on July 15, 1976, the Evaluation Statement prepared by GSA describes the present position as Supervisory GAO Management Auditor, GS-343-15, and states that the new position is being "re-written to reflect changes in assignments and responsibilities." Based on the evidence before us, we conclude that the grade GS-15 position was transferred to GSA at the time of the transfer of function.

As to the termination date of Mr. Johnson's detail, we held in our prior decision that Mr. Johnson was entitled to a retroactive temporary promotion with backpay for the period from the 121st day of his detail until the position was reclassified downward on July 15, 1976. In establishing July 15, 1976, as the terminal date for backpay purposes we reasoned as follows:

"The GS-15 position was reclassified downward by GSA on July 15, 1976, to Digital Computer Systems Administrator, GS-330-14. When a position is classified downward during a detail, the detailed individual may only receive the salary authorized for that position, and he may not continue to receive pay at the higher level on and after the effective

date of the reclassification. Jacob Klein, B-194891, August 8, 1979, 58 Comp. Gen. 719; Helen Mansfield, B-192765, May 9, 1979. Mr. Johnson refers to a September 1, 1976, letter as evidence that the GS-15 position was still classified at a later date. However, that letter indicates that it was a reconsideration request of the GS-14 reclassification action. While the initiating office had recommended a GS-15 classification, the Personnel Office recommended and approved a GS-14 position."

We turn to Mr. Johnson's contention on appeal. The General Accounting Office Act of 1974, Pub. L. No. 93-604 (88 Stat. 1959, January 2, 1975) authorized the transfer of the function of auditing all Government transportation freight and passenger bills from the General Accounting Office (GAO) to the General Services Administration (GSA). Section 202(b) of the Act states as follows:

"(b) Personnel transferred pursuant to subsection (a) of this section shall not be reduced in classification or compensation for two years after such transfer, except for cause. After such two-year period, each person transferred pursuant to subsection (a) shall be subject to the provisions of section 5337 of title 5, United States Code, as if such person had continued to be an employee of the General Accounting Office."

The clear terms of the statute protect personnel who transfer from reclassification for the prescribed 2-year period. Moreover, the legislative history and analysis of section 202 of the Act is equally pointed on the protection being provided in subsection 202(a). Senate Report No. 93-1314, 93d Cong., 2d Sess. 3 (1974) states as follows:

"Employees of GAO have expressed concern about the transfer of personnel currently assigned to the Transportation Claims Division within GAO. (The legislation provides for the transfer of all records, personnel, funds, etc., involved in the audit responsibility.) The employees are concerned about job protection, salary retention, and the possible loss of personnel due to relocation outside the GAO building.

"The committee, to meet these concerns, amended the title to insure that personnel transferred shall not be reduced in classification or compensation for two years after such transfer, except for cause, and that after such two year period such personnel shall be subject to the provisions of section 5337 of title 5 United States Code."

According to the record, Mr. Johnson was transferred at his assigned title, series, and grade, namely, Supervisory Computer Systems Analyst, GS-334-14. Mr. Johnson's position at grade GS-14 was not reduced in classification or compensation at that time, nor was he at a later date. In respect to the detail, it is well established that the higher-graded position is not filled by a detail, as the employee continues to be the incumbent of the position from which detailed. See Jacob Klein, supra.

Therefore, we find that the personnel (employee) protections contained in section 202(b) of Public Law No. 93-604 have been afforded Mr. Johnson and may not be extended to a higher-graded position the duties of which Mr. Johnson performed incident to an informal detail. The determination in our decision B-197105, September 30, 1980, establishing the terminal date of Mr. Johnson's detail as July 15, 1976, is sustained.

In our prior decision we concluded that Mr. Johnson was entitled to a retroactive temporary promotion with back-pay under our Turner-Caldwell decisions for the period from the 121st day of his detail until the position was reclassified down on July 15, 1976. The effective date for commencing the detail was set as September 29, 1975, the day Mr. Johnson assumed the higher-graded GS-15 position duties at GAO. This determination has been questioned in view of implementing guidance for our Turner-Caldwell line of decisions issued by the Civil Service Commission in CSC Bulletin No. 300-40 dated May 25, 1977. Paragraph 8B of CSC Bulletin No. 300-40 provides as follows:

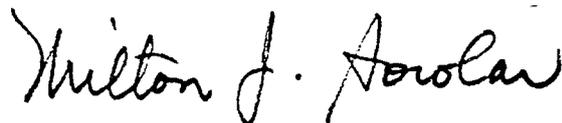
"B. Scope of Commission instruction. The Commission's instruction for securing prior approval for continuation of details beyond 120 days relates only to details within the same agency of employees serving in competitive

positions and, in the excepted service, positions under the General Schedule. Since the GAO decision follows the Commission's instruction, it would not apply to positions beyond that scope, e.g. Postal Service jobs." Emphasis added.

In interpreting this provision we have held that an employee detailed from a grade GS-12 position with the Small Business Administration to a grade GS-13 position with the Federal Energy Administration is not entitled to a retroactive temporary promotion and backpay under our Turner-Caldwell decisions. James W. Barrett, B-193360, May 7, 1979.

The facts in the present case are distinguishable since Mr. Johnson was not detailed from GAO to GSA. Instead, his position and the position to which he was detailed were part of a transfer of function from one agency to another. We do not believe that the limitation provided in the CSC Bulletin is intended to preclude entitlement to a retroactive temporary promotion and backpay under these circumstances. Therefore, we conclude that the detail may be treated as one continuous detail without interruption due to the transfer of function.

Accordingly, we sustain our prior decision holding that Mr. Johnson is entitled to a retroactive temporary promotion with backpay for the period from the 121st day of his detail which commenced September 29, 1975, until the position was reclassified downward on July 15, 1976.



Acting Comptroller General
of the United States