

**DECISION**

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

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**FILE:** B-202631**DATE:** December 7, 1981**MATTER OF:** Benjamin C. Smith - Claim for Backpay**DIGEST:**

Employee in grade GS-6, step 10, received temporary promotion to grade GS-7, and later received a permanent promotion from his regular grade GS-6 position to a grade GS-8 position. Employee claims backpay on basis that upon promotion to grade GS-8 he should have received a two-step increase in his rate of basic pay based upon the grade GS-7 position rather than the grade GS-6 position. Where promotion document shows promotion to grade GS-8 position was from the employee's regular position at grade GS-6, and employee could not have been promoted from GS-7 to GS-8 because of time in grade requirements the agency correctly set his rate of basic pay upon promotion.

This action is in response to a request for an advance decision dated March 2, 1981, from Lieutenant Colonel A.T. Holder, Chief, Finance and Accounting Division, United States Army Missile Command, Redstone Arsenal, Alabama, concerning the claim for backpay by Mr. Benjamin C. Smith, an employee of the Arsenal. Mr. Smith claims that his rate of pay upon promotion from a grade GS-6 position to a grade GS-8 position should have been adjusted on the basis of the rate of pay he received while temporarily promoted to a grade GS-7 position. As discussed below, the agency correctly established his rate of pay upon his permanent promotion.

The record shows that effective February 18, 1979, Mr. Smith received a temporary promotion from the position of Quality Inspection Specialist, grade GS-6, step 10, to Construction Inspector, grade GS-7, step 9. A Notification of Personnel Action Form (SF-50) dated October 24, 1979, shows that effective October 28, 1979, Mr. Smith was promoted from his regular position of Quality Inspection Specialist, grade GS-6, step 10, at a salary of \$16,293

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per annum to the position of Engineering Technician, grade GS-8, step 6, at an annual salary rate of \$17,993 per annum.

Mr. Smith contends that incident to his promotion on October 28, 1979, his rate of pay should have been set at grade GS-8, step 8, \$19,021 per annum, two steps above the rate of GS-7, step 9, which he received in connection with his temporary promotion. Instead his rate of pay was established at grade GS-8, step 6, on the basis of the rate of pay he had earlier received while in a wage grade position. That wage grade rate was determined to be equivalent to grade GS-9, step 2, for purposes of the highest previous rate rule set forth at 5 C.F.R. § 531.203(d)(4)(1979).

Mr. Smith's claim for a pay rate at grade GS-8, step 8, rather than GS-8, step 6, upon his promotion, is based upon the rule set forth at 5 U.S.C. § 5534(b)(1976), and the implementing regulation at 5 C.F.R. § 531.204(a)(1979), which provides that upon promotion from one General Schedule grade to a higher General Schedule grade, an employee is entitled to basic pay at the lowest rate of the higher grade which exceeds his existing rate by not less than two steps of the grade from which he is promoted. Essentially, it is Mr. Smith's position that the rate of pay he received while temporarily promoted to GS-7, step 9, is to be considered his existing rate for the purpose of applying the two-step increase rule.

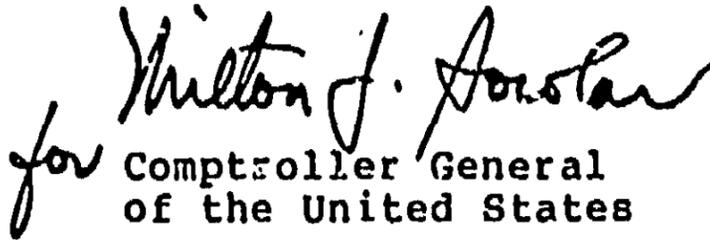
As stated above, the SF-50 dated October 24, 1979, shows that effective October 28, 1979, Mr. Smith was promoted to the grade GS-8 position from his regular position as a Quality Inspection Specialist, grade GS-6. This is consistent with the subsequently dated SF-50 reflecting the fact that his temporary promotion to GS-7, step 9, was terminated and he was returned to his regular GS-6, step 10 position, on October 27, 1979. We have been advised that the action returning Mr. Smith to his GS-6, step 10 position, was necessary because he would not have been eligible for promotion to the grade GS-8 position from the GS-7 position he occupied in connection with his temporary promotion since he did not meet the applicable time in grade requirement. Specifically, he had not served

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one year in grade GS-7 as required by 5 C.F.R. Part 300, Subpart F (1979). Since Mr. Smith was not and could not have been promoted from the GS-7 position, the rate of pay he received while temporarily promoted to that position is not the existing rate of the grade from which he was promoted for purposes of applying the two-step increase rule.

Since Mr. Smith was promoted from the GS-6 position of Quality Inspection Specialist, the two-step increase rule is to be applied to the rate he received for step 10 of that grade. Under that rule, his pay was required to be established at no less than step 5 of grade GS-8. However, upon his promotion to grade GS-8 the agency gave Mr. Smith the benefit of the "highest previous rate rule" set forth at 5 C.F.R. § 531.203(2) (1979). By virtue of that regulation, an agency may pay an employee who is reemployed, transferred, reassigned, promoted or demoted at any rate of the grade which does not exceed his highest previous rate. If the employee's previous rate falls between two rates of the grade, the agency may pay him at the higher rate. By giving Mr. Smith the benefit of his highest previous rate equivalent to grade GS-9, step 2, \$17,603 per annum at the time of his promotion, the agency set Mr. Smith's pay at grade GS-8, step 6, one step higher than required by the two-step increase rule. This is the highest step in grade that Mr. Smith could have been given even if the agency had treated the rate for GS-7, step 9, as his highest previous rate.

In view of the above, we conclude that the agency properly set Mr. Smith's rate of pay upon his promotion to grade GS-8, and accordingly, his claim for backpay may not be allowed.

*for*   
Comptroller General  
of the United States