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DECISION



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

20919

FILE: B-204727

DATE: March 1, 1982

MATTER OF: Gregory D. Stover

DIGEST: Employee of Fish and Wildlife Service may be promoted retroactively in accordance with 53 Comp. Gen. 216 (1973) after agency reclassification action. Agency requirement that requests for personnel action be forwarded to Washington Office for approval of promotions at or above GS-12 does not relieve agency of requirement to promote qualified incumbent or replace him within four pay periods after position has been reclassified.

By a letter dated July 31, 1981, Mr. Gregory D. Stover, appealed the action of our Claims Group, AFMD, in Settlement Certificate No. Z-2830458, issued July 9, 1981, which denied his claim for a retroactive promotion and backpay based on an agency reclassification action. For the reasons stated herein, we find that Mr. Stover's claim may be allowed and the action of our Claims Group is reversed.

The record shows that on August 7, 1980, Mr. Stover, a Special Agent/Pilot (Wildlife), GS-1812-11, with the Division of Law Enforcement, Fish and Wildlife Service (FWS), United States Department of the Interior, filed a classification appeal with the Office of Personnel Management (OPM). Subsequently, OPM requested information from FWS regarding Mr. Stover's position. This request was forwarded to the appropriate FWS regional personnel office. Because there was no evaluation statement for Mr. Stover's GS-11 position, a new Position Description, No. 59100-5, was prepared. Position Description No. 59100-5, Special Agent/Pilot (Wildlife), GS-1812, was classified at grade GS-12 on September 8, 1980, by the regional classification officer. A request for personnel action to promote Mr. Stover was forwarded to the FWS's Washington Office in accordance with Chapter 22 AM 2.2A of the FWS Administrative Manual. Chapter 22 AM 2.2A requires program management clearance from the Washington Office for all

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personnel action requests in the Division of Law Enforcement for positions at the GS-12 level and above. On December 19, 1980, OPM found that Mr. Stover's Position Description, No. 59100-5, was properly classified at grade GS-12 and granted his appeal. Mr. Stover was promoted to grade GS-12 effective January 25, 1981.

On December 23, 1980, after the decision by OPM and prior to his promotion, Mr. Stover requested that he be promoted to grade GS-12 retroactive to September 8, 1980, in accordance with Comptroller General decision 53 Comp. Gen. 216 (1973). On April 17, 1981, FWS denied Mr. Stover's request for a retroactive promotion on the basis that the GS-12 position was not given program management clearance at the Washington Office level until after OPM rendered its decision. The FWS states that the GS-12 position was not established until that time.

On April 23, 1981, Mr. Stover filed a claim for a retroactive promotion with our Claims Group. As stated earlier, his claim was denied on July 9, 1981. The appeal of that denial resulted in this decision.

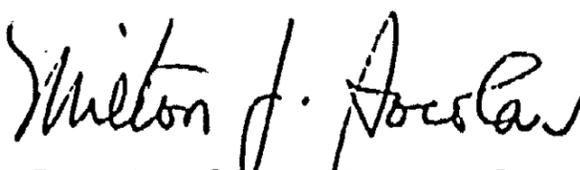
The FWS in a letter to the General Accounting Office dated August 17, 1981, has taken the position that 53 Comp. Gen. 216 is not applicable to Mr. Stover's case because the GS-12 position, No. 59100-5, was not established until January 1981. We find that FWS has misinterpreted Comptroller General decision 53 Comp. Gen. 216 and that it is controlling in this case.

In 53 Comp. Gen. 216 an agency reclassified a position from GS-12 to GS-13. A request for personnel action was submitted by the employee's supervisor. No action was taken. A second request was submitted and no action was taken. We pointed out that it was well established that when an agency reclassifies a position it must within a "reasonable time" after the classification action either promote the incumbent of the position if he is qualified or remove him. In that decision we defined "reasonable time" and held that the employee should be promoted retroactively no earlier than the date of the classification action and no later than the beginning of the fourth pay period after the classification action.

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In Mr. Stover's case it appears that the classification action occurred on September 8, 1980. The record indicates that classification authority was delegated to the regional office level and there is nothing to suggest that actions taken at the regional office level with respect to the reclassification of Mr. Stover's position were incomplete or otherwise defective. Compare Gordon L. Wedemeyer, B-200638, October 9, 1981, in which final classification authority was reserved to headquarters level. Accordingly, his promotion should be made retroactively to a date not earlier than September 8, 1980, and not later than the beginning of the fourth pay period after September 8, 1980. Just as in 53 Comp. Gen. 216, a request to promote the incumbent, Mr. Stover, to the newly reclassified position was properly initiated. As in the published decision, however, the promotion request was not acted on in a timely manner. In Mr. Stover's case, failure to process the promotion request appears to have been the result of a misconception of the requirements of Chapter 22 AM 2,2A of the FWS Administrative Manual as it applies to classification actions. That regulation only requires that selection, promotion and reassignment action requests be forwarded to the Washington Office for approval. It does not require program management clearance of a classification action itself and it does not stay the effect of a valid classification action taken at the regional office level under properly delegated authority. In light of 53 Comp. Gen. 216, the FWS's Washington Office should have acted within four pay periods on the personnel action request.

Accordingly, the action of our Claims Group is reversed and Mr. Stover may be promoted retroactively in accordance with 53 Comp. Gen. 216.

for 
Comptroller General
of the United States