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PK1**DECISION****THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-204769**DATE:** April 13, 1982**MATTER OF:** Anton Daniels - Retroactive promotion and backpay

DIGEST: Employee of Maritime Administration who claimed a retroactive promotion and backpay for period before his position was reclassified, is not entitled to payment. General rule is that even though position is reclassified to a higher grade, an employee is not entitled to additional compensation until he is promoted to the higher grade. There is no entitlement to backpay for periods of erroneous classification under Back Pay Act, 5 U.S.C. § 5596 or pertinent classification statute, 5 U.S.C. § 5346, which does not expressly provide for backpay.

The issue decided in this case is whether an employee whose position is reclassified to a higher grade is entitled to a retroactive promotion and backpay for the time, before the reclassification, that he was performing the same duties. The general rule, which applies here, is that even though a position is reclassified to a higher grade, the employee's entitlement to the higher salary does not commence until he is actually promoted to the reclassified position.

Mr. Anton Daniels, an employee of the Maritime Administration, Department of Commerce, requests reconsideration of our Claims Group's disallowance of his claim for retroactive promotion and backpay. Mr. Daniels' position of Motor Vehicle Foreman was reclassified from WS-4 to WS-5 on August 24, 1978, and he was promoted the next month. Mr. Daniels sought retroactive promotion and backpay contending that he should have been promoted in March 1974, since there was no change in his job duties between March 1974, and the reclassification action in August 1978. By letter of April 10, 1980, Mr. Daniels forwarded his claim to our Claims Group. Finding that no officially established and classified higher grade position existed during the time of Mr. Daniels' claim, our Claims Group denied Mr. Daniels' claim by Certificate of Settlement Z-2828876, June 23, 1981.

Expressing dissatisfaction with this result Mr. Daniels has appealed the Claims Group adjudication. In essence Mr. Daniels contends the reclassification action of August 1978 merely corrected the 1974 classification and, since no significant changes were made in the position description, the reclassification of his position to WS-5 was a corrective measure evidencing administrative error on the part of the agency. This agency error, Mr. Daniels concludes, is an unjustified personnel action which should be remedied by an award of backpay.

It is well established that employees of the Federal Government are entitled only to the salaries of the positions to which they are appointed regardless of the duties they actually perform. Thus, even if a position to which an employee is appointed is subsequently reclassified to a higher grade, entitlement to the pay of the higher grade does not commence until the employee is actually promoted to the higher grade. 52 Comp. Gen. 631 (1973); and court decisions cited therein. Having reviewed all of Mr. Daniels' submissions, we believe that his complaint concerns the question of whether the position he occupied was improperly classified during the period of his claim.

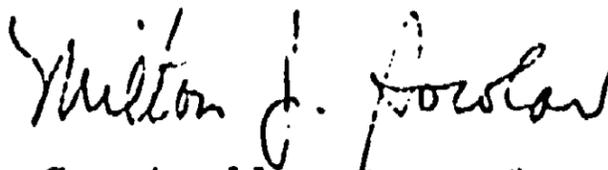
The job grading or classification of prevailing rate positions is governed by the provisions of 5 U.S.C. § 5346 (1976) which empowers the Office of Personnel Management to prescribe regulations regarding the classification of positions. Section 532.702(b)(11) of title 5, Code of Federal Regulations (1981), provides that except where a classification action results in a downgrading or other reduction in pay, the effective date of a change of classification may not be earlier than the date of the agency decision, nor later than the beginning of the first pay period which begins after the 60th day from the date the application was filed. The sole provision for a retroactive effective date for classification is when there is a timely appeal which results in the reversal, in whole or part, of a downgrading or other classification action which had resulted in the reduction of pay. See 5 C.F.R. § 532.702(b)(9). Accordingly, the reclassification of a position may not be made retroactively other than as provided for in 5 C.F.R. § 532.702(b)(9).

Here, the record is silent as to whether Mr. Daniels exercised his appeal rights concerning the classification of

his position prior to August 1978. In view of the authorities discussed above, however, this Office may not interpose its judgment regarding Mr. Daniels' classification or consider his claim other than on the basis of the Office of Personnel Management classification. See for example William A. Campbell, B-183103, June 2, 1975, and Gwenn Herring, B-183120, February 21, 1975, dealing with General Schedule position classification appeals.

In United States v. Testan, et al., 424 U.S. 392 (1976), the United States Supreme Court held that there is no substantive right to backpay for periods of wrongful position classification where the pertinent classification statutes, 5 U.S.C. §§ 5101-5115, did not expressly make the United States liable for pay lost through an improper classification. We note that the classification statute applicable in this instance, 5 U.S.C. § 5346, also does not contain any express provision making the United States liable for pay lost during a period of improper classification. In addition, the court held in Testan, supra, that the Back Pay Act, 5 U.S.C. § 5596, did not afford a remedy for periods of erroneous classification. Linda Palermo and Emmett Grubbs, Jr., B-189109, October 5, 1977.

In view of the Supreme Court's holding in Testan, and since Mr. Daniels does not qualify for retroactive promotion and backpay under the above-discussed Office of Personnel Management regulations, there is no authority under which Mr. Daniels' claim may be allowed. Accordingly, the adjudication of our Claims Group is sustained.

for 
Comptroller General
of the United States