

DECISION



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

Cigarran 119281

FILE: B-202631

DATE: August 24, 1982

MATTER OF: Benjamin C. Smith

DIGEST: Employee in grade GS-6, step 10, received a temporary promotion to grade GS-7, step 9. Later a Notification of Personnel Action dated October 24, 1979, showed that he received a permanent promotion from his regular grade GS-6 position to a grade GS-8 position. The agency properly disregarded his rate of pay during the temporary promotion in establishing his rate of pay upon his subsequent promotion. An agency may terminate a temporary promotion at any time without express notice and the agency had a nondiscretionary policy requiring employees to be promoted from their regular position. Decision Matter of Smith, B-202631, December 7, 1981, affirmed.

Mr. Benjamin C. Smith, an employee of the United States Army Missile Command, Redstone Arsenal (Army Missile Command), Alabama, has requested reconsideration of our decision, Matter of Smith, B-202631, December 7, 1981. In that decision we denied his claim for back-pay based on his contention that his rate of pay upon permanent promotion 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. On the basis of the reasons set forth below, we again hold that Mr. Smith's rate of pay was properly established upon his promotion to grade GS-8.

Effective February 18, 1979, Mr. Smith received a temporary promotion from the position of Quality Inspection Specialist, grade GS-6, step 10, to Construction Inspection Specialist, grade GS-7, step 9. That temporary promotion was effective through February 17, 1980, unless sooner revoked. 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 in grade GS-6, step 10, at a salary of \$16,232 per annum,

to the position of Engineering Technician, grade GS-8, step 6, at an annual salary rate of \$17,993 per annum. A subsequently dated SF-50 shows that Mr. Smith's temporary promotion in grade GS-7, step 9, was terminated and he was returned to his regular GS-6, step 10, position, on October 27, 1979.

Mr. Smith has claimed that incident to his promotion to the grade GS-8 position his rate of pay should have been established at grade GS-8, step 8, \$19,021 per annum, two steps above the rate of GS-7, step 9, which he received during his temporary promotion. The claimed pay entitlement at the grade GS-8, step 8, is based upon the two-step increase rule set forth at 5 U.S.C. § 5334(b). Instead his rate of pay was established at grade GS-8, step 5, 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 computation of the highest previous rate as set forth at 5 C.F.R. § 531.203(d)(4) (1979).

In the decision of December 7, 1981, we determined that the agency had correctly established Mr. Smith's rate of pay upon promotion. The basis for the determination was that the rate of pay which Mr. Smith received while temporarily promoted was 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 not and could not have been promoted from the grade GS-7 position. This determination was reached in part because we had been informally advised that Mr. Smith was ineligible for promotion from the grade GS-7 position to the grade GS-8 position due to the applicable time-in-grade requirement.

In his request for reconsideration, Mr. Smith contends that the time-in-grade requirement for promotion was not a consideration in his promotion from the grade GS-6 position to the grade GS-8 position. The agency has advised that the information informally given us--that Mr. Smith was not eligible for promotion from his grade GS-7 position because of the time-in-grade requirement--

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was erroneous. However, the agency further advises that there existed an unwritten nondiscretionary agency policy which required that he be promoted from his regular grade GS-6 position rather than from the grade GS-7 position he occupied during his temporary promotion.

As stated above, the Notification of Personnel Action dated October 24, 1979, expressly provided that effective October 28, 1979, Mr. Smith was to be promoted from his regular grade GS-6 position to the grade GS-8 position. It is well settled that temporary promotions may be ended and the employee returned to his permanent position at any time in the discretion of the agency and that express notice of such termination is not required. See Matter of Gibson, B-205459, July 13, 1982, and Matter of Danoff, B-198142.2 February 24, 1982. In view of the agency's nondiscretionary policy that employees be promoted from their last regular position, we must regard the Notification of Personnel Action dated October 24, 1979, as effecting the termination of Mr. Smith's temporary promotion prior to his permanent promotion to grade GS-8 on October 28, 1979. Accordingly, Mr. Smith is regarded as having been promoted from the grade GS-6 position at the time of his permanent promotion. The subsequent Notification of Personnel Action showing the termination of Mr. Smith's temporary promotion was legally unnecessary and merely formally documented the prior termination of Mr. Smith's temporary promotion.

Subsection 5334(b) of title 5, United States Code, provides that upon promotion a General Schedule employee is entitled to basic pay at the lowest rate of the higher grade which exceeds his existing rate of pay by not less than two steps of the grade from which he is promoted. Since, as set forth above, Mr. Smith was promoted from his regular grade GS-6 position of Quality Inspection Specialist, the two-step increase rule is to be applied to the rate he received in grade GS-6, step 10. Under 5 U.S.C. § 5334(b) 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(c) and, based on his highest previous

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rate, equivalent to grade GS-9, step 2, at Mr. Smith's pay at grade GS-8, step 6.

In view of the above, since Mr. Smith was promoted from his regular grade GS-6 position, the agency properly set his rate of pay upon promotion and there is no basis upon which to allow his claim for backpay.

Milton J. Fowler
Acting Comptroller General
of the United States