

DECISION

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

FILE: B-209414**DATE:** January 31, 1983**MATTER OF:** Eric E. Bahl--General Schedule Within-Grade
Increase--Grade Retention--Repromotion to
Prior Position After Demotion**DIGEST:**

Where a General Schedule employee who was demoted is repromoted to his former position during a 2-year period of grade retention under 5 U.S.C. § 5362 (Supp. IV 1980), the schedule for his periodic step increases established before demotion and grade retention remains in effect. Grade retention under 5 U.S.C. § 5362 is to be distinguished from pay retention under § 5363. Repromotion during a period of grade retention is not an "equivalent increase" under 5 U.S.C. § 5335(a) (Supp. IV 1980); 5 C.F.R. § 531.403 (1982). Prior decisions arising before Civil Service Reform Act of 1978 are not applicable.

This decision is in response to a letter dated October 1, 1982, from Mr. Gary W. Divine, President, Local 29, National Federation of Federal Employees, requesting a decision pursuant to the provisions of 4 C.F.R. § 22 (1982), on behalf of Mr. Eric E. Bahl, a civilian employee of the United States Army Corps of Engineers, Kansas City, Missouri. The Corps of Engineers was served, as required by 4 C.F.R. § 22.4 (1982), on October 4, 1982, but has not responded to the claimant's request for a decision.

Mr. Bahl, a General Schedule employee, requests that this Office retroactively award him a within-grade increase under the provisions of 5 U.S.C. § 5335 (Supp. IV 1980), based on credit toward a within-grade increase for the time period during which he was demoted to a lower grade while receiving a grade retention. Thus, the issue we are asked to consider is whether an employee's repromotion to his former position, occurring during the 2-year grade retention period of 5 U.S.C. § 5362 (Supp. IV 1980), is an "equivalent increase" under 5 U.S.C. § 5335(a) (Supp. IV 1980), and 5 C.F.R. § 531.403 (1982), so as to require a new waiting period for his periodic step increases beginning as of the date of repromotion.

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Pursuant to the provisions of Title VIII of the Civil Service Reform Act of 1978, Pub. L. 95-454, 92 Stat. 1111, 1218-1220, 5 U.S.C. §§ 5361-5366 (Supp. IV 1980), and the regulations at 5 C.F.R. Part 531 (1982), we hold that the repromotion of a General Schedule employee under the circumstances described does not constitute an equivalent increase. Therefore, Mr. Bahl is entitled to be retroactively awarded a within-grade increase based on his original schedule. The date of his restoration to his former position is irrelevant for purposes of computing within-grade increases in his case.

The facts are as follows. Mr. Bahl was promoted to step 1 of grade GS-11 when he was transferred to the Army Real Estate Agency in Europe in June 1975. Due to subsequent pay adjustments and within-grade increases, Mr. Bahl had attained step 4 of grade GS-11 in June 1978. Had Mr. Bahl remained in that position and grade, his next two within-grade increases would have occurred in June 1980 and June 1982. However, on July 1, 1980, Mr. Bahl was demoted to grade GS-9 when he was transferred back to Kansas City. Concurrently, he received a within-grade increase to step 5 of his former grade. Because Mr. Bahl qualified under the provisions of 5 U.S.C. § 5362 (Supp. IV 1980), he was afforded grade retention at that time, and, hence, for pay administration purposes, his grade remained the same (grade GS-11, step 5). In November 1980, Mr. Bahl was repromoted to his former position at grade GS-11, step 5.

In light of Mr. Bahl's repromotion in November 1980, the Acting Personnel Officer of the Department of the Army Corps of Engineers, Kansas City District, denied Mr. Bahl's request for a retroactive within-grade increase effective on or about July 1, 1982, stating that it was not due until November 1982, and citing 42 Comp. Gen. 702 (1963). Mr. Bahl maintains that the Department wrongfully withheld his within-grade increase; that the Comptroller General decision cited by the Department is no longer valid under recent statutes and regulations; and that he should be retroactively awarded all monies and interest due to him as a result of the within-grade denial.

Grade retention following a change of positions is governed by section 5362 of Title 5, United States Code (Supp. IV 1980). That section provides that "[a]ny employee * * * whose position has been reduced in grade is entitled

* * * to have the grade of such position before reduction be treated as the retained grade of such employee for the 2-year period beginning on the date of the reduction in grade." 5 U.S.C. § 5362(b)(1) (Supp. IV 1980). It further provides that, for the 2-year period, the retained grade "shall be treated as the grade of the employee's position for all purposes (including pay and pay administration * * *)." 5 U.S.C. § 5362(c). Grade retention under section 5362 is to be distinguished from pay retention under section 5363 of Title 5, U.S. Code, another new provision added by the Civil Service Reform Act of 1978.

Section 5335(a) of Title 5, U.S. Code (Supp. IV 1980), provides that an employee is eligible for periodic step increases in pay upon completion of 104 calendar weeks of service in pay rates 4, 5, and 6, as long as the employee did not receive an "equivalent increase" in pay from any cause during that period.

In two cases arising before the Civil Service Reform Act of 1978, Richard C. Dunn, B-193394, March 23, 1979, and Duane E. Tucker, B-193336, March 23, 1979, we held that, after a demotion with retained pay and a later repromotion to the employee's former grade and step, the employee must begin a new waiting period upon repromotion without counting service at the grade and step before the demotion as part of the new waiting period. The Dunn and Tucker cases followed the rule formulated under the statutory provisions in effect before the Civil Service Reform Act of 1978. See 43 Comp. Gen. 701 (1964); 43 Comp. Gen. 507 (1964); 42 Comp. Gen. 702 (1963). However, that rule is inapplicable to a repromotion during a period of grade retention as defined by Title VIII of the Civil Service Reform Act.

Congress provided that the retained grade of an employee is to be treated as the grade of the employee's position for all purposes during the 2-year period. Those purposes include pay and pay administration, retirement, life insurance, eligibility for training, promotion and reassignment, and other employee benefits. 5 U.S.C. § 5362(c)(Supp. IV 1980). Although Congress articulated several exceptions to the rule, the facts of this case do not conform to any of the situations in which an employee's assigned grade, rather than his retained grade, is to be used. See 5 U.S.C. § 5362 (c)(1)-(4)(Supp. IV 1980); H.R. Rep. No. 1403, 95th Cong., 2d Sess. 63-64 (1978).

This interpretation of the Civil Service Reform Act is consistent with the Office of Personnel Management regulations governing within-grade increases. See 5 C.F.R. Part 531 (1982). We agree with Mr. Bahl that the definition of "equivalent increase," as set forth in 5 C.F.R. § 531.403 (1982), does not include repromotion while in the same retained grade status under 5 U.S.C. § 5362. Since an employee's retained grade is to be used for purposes of pay and pay administration during the 2-year period, under 5 U.S.C. § 5362(c), the employee remains entitled to within-grade increases otherwise due during that period without regard to the demotion. Hence, a repromotion to the former position during that period does not represent an equivalent increase under 5 C.F.R. § 531.403 (1982); therefore, a new waiting period does not commence.

On the basis of the relevant statutory and regulatory provisions, the repromotion of Mr. Bahl to his former position during the period of grade retention did not constitute an equivalent increase, and did not require the commencement of a new waiting period for within-grade increases. The schedule established by his last within-grade increase, on or about July 1, 1980, applies, and Mr. Bahl is entitled to be retroactively awarded the within-grade increase due him on or about July 1, 1982.

Milton J. Fowler
for Comptroller General
of the United States