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DECISION



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

FILE: B-209115

DATE: May 24, 1983

MATTER OF: Michael Halik - Claim for Retroactive Promotion Incident to Overlong Detail

DIGEST: An employee of the Department of the Army claims a retroactive temporary promotion with backpay under our Turner-Caldwell decisions for having performed the duties of a higher graded position during an overlong detail from May 14, 1972 through January 4, 1980. However, the Court of Claims ruled in Wilson v. United States, Ct. Cl. No. 324-81C, Order, October 23, 1981, that employees have no entitlement under the applicable statute or regulations to temporary promotions for overlong details. Since we have accepted the Wilson decision and no longer follow our prior Turner-Caldwell decisions with respect to pending or future cases, the employee's claim is denied. See Turner-Caldwell III, B-203564, May 25, 1982, 61 Comp. Gen. 408.

Mr. Michael Halik has appealed our Claims Group settlement (Z-2844097, August 11, 1982) barring consideration of a portion--and denying the balance--of Mr. Halik's claim for a retroactive temporary promotion and backpay incident to an alleged overlong detail for the period from May 14, 1972 through January 4, 1980. Pursuant to 31 U.S.C. § 3702 (formerly 31 U.S.C. § 71a) which provides that a claim must be received in GAO within 6 years after the date it accrued, our Claims Group barred consideration of that portion of Mr. Halik's claim arising more than 6 years before July 19, 1982, when Mr. Halik's claim was received in this Office. Our Claims Group denied the balance of his claim on the basis of Turner-Caldwell III, B-203564, May 25, 1982, 61 Comp. Gen. 408, where we ruled that we will follow the decision by the Court of Claims in A. Leon Wilson v. United States, Ct. Cl. No. 324-81C, Order, October 23, 1981, which reaches the opposite result from our prior Turner-Caldwell decisions. Therefore, we no longer follow our prior Turner-Caldwell decisions.

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Mr. Halik contends on appeal that had the Army Civilian Personnel Office followed its procedures for handling backpay claims, neither of the underlying bases for our Claims Group's disallowance would have occurred in his case; that is, his claim would have been timely filed and it would have been considered by this Office before the Wilson case was decided by the Court of Claims. Mr. Halik states that on January 4, 1980, he formally requested that the Army submit his backpay claim to the General Accounting Office. He was informed by the Civilian Personnel Office that an administrative report forwarding his claim to GAO was being prepared. Mr. Halik recounts that 2 years later, in connection with his request for status on his claim, he was informed by Army officials that "as a result of an administrative oversight" his claim had never been sent to GAO, nor had the administrative report ever been written.

We find it is unnecessary to decide whether the Barring Act, 31 U.S.C. § 3702, is applicable to Mr. Halik's claim because his claim must be denied for the reasons stated below.

Mr. Halik's claim for a retroactive promotion and backpay rests upon our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), sustained in 56 Comp. Gen. 427 (1977), which held that employees who were detailed to higher graded positions more than 120 days without prior Civil Service Commission approval are entitled to temporary promotions beginning on the 121st day. However, as stated above, in Turner-Caldwell III, we decided to follow the Court of Claims decision in Wilson with respect to all pending and future claims and to no longer follow our prior Turner-Caldwell decisions. Accordingly, since Mr. Halik's claim rests upon our prior Turner-Caldwell decisions, his claim must be denied.

Mr. Halik questions the scope and extent of our review and investigation of his claim and requests copies of his agency's submissions in his case. Mr. Halik's

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request for copies will be referred to our Office of Policy for handling in accordance with Part 81 of title 4, Code of Federal Regulations.

As to the scope and extent of our review, we point out that there is no provision under claims procedures contained in Part 31 of title 4, Code of Federal Regulations (1982), for our Office to conduct adversary hearings or to interview witnesses. All claims are considered on the basis of the written record only, and the burden of proof is on the claimants to establish the liability of the United States and the claimants' right to payment. 4 C.F.R. § 31.7.

We have reviewed all of the documentation submitted by the agency and by Mr. Halik and find no reason to disagree with the Claims Group settlement. Accordingly, we sustain our Claims Group determination denying Mr. Halik's claim for a retroactive promotion and backpay.

for Milton J. Fowler
Comptroller General
of the United States