

DECISION

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

11/29/83
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FILE: B-212086**DATE:** November 29, 1983**MATTER OF:** Patrick Johnson**DIGEST:**

The claimant is not entitled to backpay based upon unreasonable delay between upward reclassification of his position to grade GS-10 and his promotion to that grade. The classification action became effective only when the properly delegated official certified the reclassification on February 16, 1982, following a review of the claimant's particular duties and responsibilities. An earlier memorandum addressing the classification issue did not constitute the reclassification action. The promotion 19 days after reclassification was effected within a reasonable period of time (four pay periods) within the meaning of 5 C.F.R. § 511.701(a).

In this decision we affirm our Claims Group's determination in settlement certificate Z-2846359, March 28, 1983, that Mr. Patrick V. Johnson, an employee of the Department of Housing and Urban Development, is not entitled to backpay for earlier promotion to a higher grade position.

During a Department classification survey, the GS-11 grade level of certain "Title I Representative" positions was questioned. On January 29, 1981, the headquarters office sent a memorandum to all regional personnel officers concerning the criteria applicable in establishing grade levels. The memorandum was issued after the headquarters personnel office had met with program officials in the Office of Housing to explore ways of supporting the GS-11 classification. The memorandum stated that certain of the positions in question could not be supported at the GS-11 level, but indicated that a GS-10 classification might be sustained on the basis of a delegation of additional duties involving a higher degree of independence. The memorandum indicates that those additional duties would be incorporated in a new Title I Handbook to be issued in spring 1981. The Handbook referred to in that memorandum was in fact issued subsequent to July 10, 1981.

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In October 1981 the Region V personnel office directed area offices to conduct a classification review of all positions dealing with these activities taking into account the delegations of authority reflected in the new Handbook. On the basis of an audit of the GS-9 position occupied by Mr. Johnson conducted on January 12, 1982, a position classifier determined that he was performing duties warranting a revision of his position description. A revised position description was issued by January 27, 1982.

On February 16, 1982, official action was taken reclassifying Mr. Johnson's position at the GS-10 level, as shown on Optional Form 3 (Revised August 1977, U.S. Civil Service Commission). Mr. Johnson's promotion to grade GS-10 was processed, and it became effective March 7, 1982.

Mr. Johnson believes that the classification action upgrading his position occurred when the January 29, 1981 memorandum was prepared by the headquarters personnel office. He refers to the following excerpt from a document dated June 1981, to show that the January 29, 1981 memorandum constituted a "National Classification Decision" on the "Title I Representative" positions.

"e. * * * the Office of Personnel has just completed a reclassification of the TIR function which reduces the journeymen grade from GS-11 to GS-10 (except in Region IV where the journeymen level is now GS-9)."

Mr. Johnson contends that the reclassification of his position from GS-9 to GS-10 should have been effective on or about January 29, 1981, in accordance with paragraphs 7-1a and 7-1c, Subchapter 7 of the Federal Personnel Manual. He states that he should have been promoted 45 days later on April 4, 1981, and he requests backpay from April 4 through the date of his actual promotion on March 7, 1982. Paragraph 7-1a provides that an agency classification action takes effect on the date the action is approved unless the agency specifically sets a later effective date. Paragraph 7-1c pertains to downgrading of positions and, therefore, is inapplicable to Mr. Johnson's case.

In support of its contention that Mr. Johnson's position was reclassified on February 16, 1982, the Department points out that under Office of Personnel Management regulations 5 C.F.R. § 511.701(a)(1)(i) the effective date of a position action is the "date an official with a properly delegated authority approves (certifies) the proposed classification," and that approval and certification takes place when the official(s) "signs the allocation of the position." The upward classification of Mr. Johnson's position was approved, according to the Department, on February 16, 1982, when Optional Form 8 was signed. The Department concludes that Mr. Johnson's promotion to grade GS-10 on March 7, 1982, was effected within a reasonable period of time following the date of the position reclassification as required by 5 C.F.R. § 511.701(a)(2).

We have recognized that a reclassification action is ineffective until the requirements of 5 C.F.R. § 511.701(a)(1)(i) are satisfied. Matter of Howell, B-207889, August 31, 1982. In the present case, the required certification of the reclassification action by the official having the delegated authority did not occur until February 16, 1982, when the requirements of this provision were met and the reclassification first became effective. Before this final action, Mr. Johnson could not be promoted to the upgraded position at grade level GS-10. Matter of Howell, supra, and Matter of Dierking, B-195656, December 10, 1979. The January 29, 1981 memorandum was one of several documents that reflected standards relied upon by the Department in reclassifying Mr. Johnson's position. That memorandum did not itself constitute a reclassification, as should be apparent from its contents indicating that further delegation of duties would be necessary to sustain even a GS-10 classification. The reference to the completed reclassification of the "TIR function" does not establish the classification of Mr. Johnson's position at a date earlier than February 16, 1982, although it is consistent with the fact that the headquarters personnel office had earlier agreed upon standards for the "Title I Representative" positions. The reclassification of Mr. Johnson's position did not take place until after the classification audit of January 12, 1982, when his actual duties and responsibilities were reviewed by a position classification

specialist. In this regard, we have recognized that the delay in effecting a reclassification that results from the necessity for a desk audit is not one that justifies the payment of backpay. Matter of McCrary, B-202689, July 8, 1982.

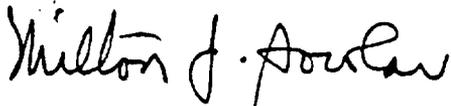
We also concur with the Department's view that Mr. Johnson's promotion on March 7, 1982, 19 days after the reclassification, was effected within a reasonable period of time under 5 C.F.R. § 511.701(a)(2). We have held that when a position is reclassified to a higher grade an agency must either promote the incumbent, if qualified, or remove him from the position not later than the beginning of the fourth pay period after the date of the reclassification action. 53 Comp. Gen. 216 (1973); Matter of McCrary, *supra*. The 19-day period in this case was well within that time limitation.

Finally, we point out that the classification action on February 16, 1982, cannot now be given retroactive effect to entitle Mr. Johnson to an earlier promotion and backpay. The general rule in classification matters is that an employee of the Government is entitled only to the salary of the position to which he is appointed, regardless of the duties he performs. When an employee performs duties normally performed by one in a grade level higher than the grade he holds, he is not entitled to the salary for the higher grade position. Matter of McGrath, 57 Comp. Gen. 404, 405 (1978). In this regard, we note that an employee can bring a position classification appeal under the procedures in 5 C.F.R. § 511.601 *et seq.* (1982). However, with an exception not applicable here, classification actions may not be made on a retroactive basis. 5 C.F.R. § 511.701(a)(4) (1982).

Furthermore, the Supreme Court has ruled that neither the Back Pay Act, 5 U.S.C. § 5596 (1976), nor the classification statute, 5 U.S.C. § 5105 *et seq.* (1976), provides a monetary remedy for periods of wrongful classification. Testan v. United States, 424 U.S. 392 (1976).

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Accordingly, we sustain our Claims Group's denial of Mr. Johnson's claim.

for 
Comptroller General
of the United States