

DECISION

29772
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-216752**DATE:** November 14, 1984**MATTER OF:** Herbert M. DeLano**DIGEST:**

An employee's claim for a retroactive promotion and backpay for a detail to a higher grade position is denied on the basis of Turner-Caldwell III, 61 Comp. Gen. 408 (1982). The fact that the employee's agency lost or misplaced his claim for a considerable time does not constitute a basis for consideration of the claim after the holding in Turner-Caldwell III that no further payments would be made to individuals detailed to higher grade positions for more than 120 days.

An employee's claim for a retroactive temporary promotion and backpay based on a detail to a higher grade position in excess of 120 days is denied. The fact that the employee's agency lost or misplaced the claim for several years provides no basis for payment of a backpay claim for an overlong detail which was not settled prior to May 25, 1982. See Turner-Caldwell III, 61 Comp. Gen. 408 (1982).

BACKGROUND

Mr. Herbert M. DeLano, an employee of the Indian Health Service, U.S. Public Health Service, filed a claim with his agency on March 7, 1978, for a retroactive promotion and backpay from July 30, 1976, to February 17, 1977, in the amount of \$855.60. His claim was denied by the Albuquerque Area Office, Indian Health Service, and Mr. DeLano forwarded the claim to our Claims Division on December 11, 1978. Claims Division returned the matter to the Public Health Service for further consideration and notified Mr. DeLano of this action. The matter was then returned to the Indian Health Service, Albuquerque Area Office.

Apparently the claim was either lost or misplaced by the agency at this point. In any case, final agency action on the claim did not occur until January 20, 1984. That action denied the claim. The denial was based in part on Turner-Caldwell III, 61 Comp. Gen. 408, supra. In addition,

030543

29772

B-216752

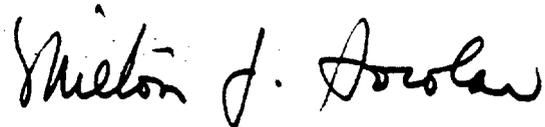
the agency stated the position to which Mr. DeLano claims to have been detailed was not established or classified.

Mr. DeLano now appeals that denial stating that he was not responsible for loss of the paperwork regarding his claim. He also supplied documentation to support his contention that the position to which he was detailed was established and classified.

CONCLUSION

Mr. DeLano's claim is based on the Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), sustained in 56 Comp. Gen. 427 (1977), which held that employees who were detailed to higher grade positions more than 120 days without prior approval of the United States Civil Service Commission (now Office of Personnel Management) were entitled to temporary promotions and backpay beginning on the 121st day of the detail. Subsequently the United States Court of Claims held in Wilson v. United States, Ct. Cl. No. 324-81C, Order, October 23, 1981, that there was no authority under statutory law or the Federal Personnel Manual to pay backpay to employees detailed to higher grade positions for over 120 days. In Turner-Caldwell III, 61 Comp. Gen. 408, supra, we indicated that we would follow the Wilson decision with respect to all pending and future claims as of the date of that decision, May 25, 1982.

Mr. DeLano's claim for backpay was not settled as of May 25, 1982. Accordingly, it must be denied. While it is unfortunate that the claim was misplaced or lost for a considerable time by his agency, this does not constitute a basis on which to consider the claim after the holdings in Wilson and Turner-Caldwell III. In view of the above it is unnecessary to consider Mr. DeLano's contention that the position was in fact established and classified.

for 
Comptroller General
of the United States