

DECISION

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

FILE: B-217830

DATE: August 29, 1985

MATTER OF: Evelyn O. Cheeseboro - Retroactive
Promotion and Backpay Incident to
Claimed Overlong Detail

DIGEST:

VA employee, a licensed practical nurse (LPN), GS-5, claims that as a GS-4 LPN, she was detailed to perform the duties of a LPN, GS-5, from October 1979 until November 1981. She seeks retroactive temporary promotion and backpay under our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), sustained in 56 Comp. Gen. 427 (1977), wherein we allowed retroactive temporary promotions and backpay where the employees were detailed to higher level positions for more than 120 days without approval of the former Civil Service Commission. However, the Court of Claims ruled in Wilson v. United States, 229 Ct. Cl. 510 (1981), that employees have no entitlement under statute or the Federal Personnel Manual to temporary promotions for overlong details. In Turner-Caldwell III, 61 Comp. Gen. 408 (1982), we have followed Wilson and overruled our prior Turner-Caldwell decisions with respect to pending or future claims.

In this decision, we address the entitlement of an employee to a retroactive temporary promotion and backpay incident to an overlong detail to a higher graded position, based on our earlier Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), and 56 Comp. Gen. 427 (1977).

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Ms. Evelyn O. Cheeseboro, a licensed practical nurse employed by the Veterans Administration (VA), has appealed the settlement action by our Claims Group, Z-2847496, September 30, 1983, which denied her claim for a retroactive temporary promotion and backpay incident to a claimed overlong detail from October 1979 until November 1981. The Claims Group denied Ms. Cheeseboro's claim on the basis of our decision in Turner-Caldwell III, 61 Comp. Gen. 408 (1982), overruling our prior Turner-Caldwell decisions.

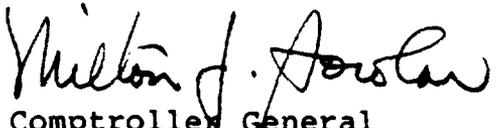
Ms. Cheeseboro's claim rests upon our prior Turner-Caldwell decisions which held that employees who were detailed to higher graded positions more than 120 days without prior approval by the United States Civil Service Commission (now Office of Personnel Management), are entitled to retroactive temporary promotions and backpay beginning on the 121st day of the detail. In Wilson v. United States, 229 Ct. Cl. 510 (1981) the Court of Claims determined that neither the applicable statute (5 U.S.C. § 3341 (1982)) nor the Federal Personnel Manual authorizes a retroactive temporary promotion and backpay in cases involving overlong details.

In Turner-Caldwell III, 61 Comp. Gen. 408, issued on May 25, 1982, on the basis of Wilson decision, we held with respect to all claims submitted here for decision, both pending and future, that we would no longer follow our prior Turner-Caldwell decisions. Accordingly, the settlement action of September 30, 1983, by our Claims Group, which denied Ms. Evelyn O. Cheeseboro's claim for a retroactive temporary promotion and backpay, is sustained.

In her letter of appeal, Ms. Cheeseboro raises an ancillary issue under which she seeks a retroactive temporary promotion and backpay for the period October 1979 to November 1981. She states that she was employed by VA from 1961 to 1963 at the GS-5 grade level. She contends that she was discriminated against when she was rehired by the agency in October 1979 at the GS-4 grade level and worked at that level until November 1981. Ms. Cheeseboro feels that since she previously was appointed to and performed duties at the GS-5 grade level and had acquired career status, she is entitled to the salary of a GS-5 employee for the period October 1979 to November 1981.

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In view of the limited factual information contained in the letter of appeal concerning this issue, we are unable to make a determination relative thereto. However, if Ms. Cheeseboro desires to pursue a claim based upon the factual data involved in the ancillary issue, she may file a claim therefor with VA. Should her claim be denied, she should request the agency to submit the claim, along with its administrative report, to the Claims Group, General Government Division, United States General Accounting Office, 441 G Street, N.W., Washington, D.C., 20548, for settlement action.


Acting Comptroller General
of the United States