

Ratzenberger



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Winifred McCulley - Backpay - Higher Grade Duty
Assignment

File: B-229086

Date: May 25, 1988

DIGEST

A grade GS-3 employee, who claims that she was detailed to perform the duties of a grade GS-4 position for nearly 1 year, is not entitled to a retroactive temporary promotion and backpay. The Court of Claims ruled in Wilson v. United States, 229 Ct. Cl. 510 (1981), that employees have no entitlement under the applicable statute or regulations to temporary promotions for overlong details.

DECISION

This is in response to a request from Mr. Peter H. Tovar, Chief, Accounting and Finance Division, Defense Logistics Agency, for an advance decision regarding the claim of Ms. Winifred McCulley for a retroactive temporary promotion and backpay based on her performance of duties at a higher grade position in excess of 120 days. For the reasons stated below, the claim is denied.

BACKGROUND

Ms. McCulley is a grade GS-3 secretary at the Defense Logistics Service Center, Battle Creek, Michigan. During the period from December 27, 1984, through December 2, 1985, the division in which Ms. McCulley worked had a shortage of secretarial personnel. Ms. McCulley served as the branch secretary in the division, a grade GS-4 position, during that time period.

Ms. McCulley received a Letter of Appreciation from her supervisor which acknowledged that she had been asked to perform the duties of the higher level position during the period in question and she had satisfactorily done so. Although the Letter of Appreciation indicates that Ms. McCulley had not been officially detailed to the position as branch secretary for the entire period, it is

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not clear whether she may have been officially detailed for some part of that time.

Ms. McCulley now requests a retroactive temporary promotion and backpay in the amount of \$1,157.88 to cover the period of time in which she served at the higher grade position.

OPINION

The general rule is that an employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties performed. When an employee performs the duties of a higher grade level, no entitlement to the salary of the higher grade exists until such time as the individual is actually promoted. See George Twohy, B-204019, Feb. 8, 1982; Gordon L. Wedemeyer, B-200638, Oct. 9, 1981, and cases cited therein. This rule was also set forth by the United States Supreme Court in United States v. Testan, 424 U.S. 392, at 406 (1976), where the Court stated ". . . the federal employee is entitled to receive only the salary of the position to which he was appointed, even though he may have performed the duties of another position or claims that he should have been placed in a higher grade."

In the past, we held that employees officially detailed to higher positions for more than 120 days, without the then-Civil Service Commission's approval, were entitled under Civil Service Commission regulations to retroactive temporary promotions with backpay for the period beginning with the 121st day of the detail until the detail was terminated. Turner-Caldwell, 55 Comp. Gen. 539 (1975) and 56 Comp. Gen. 427 (1977).

However, in Wilson v. United States, 229 Ct. Cl. 510 (1981), the Court of Claims determined 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 (1982), we held that we would follow the Wilson decision with respect to all pending and future claims as of the date of our decision, May 25, 1982. See Edward R. Smith, B-219470, Nov. 8, 1985; Evelyn O. Cheeseboro, B-217830, Aug. 29, 1985; Michael Halik, B-209115, May 24, 1983.

Therefore, Ms. McCulley's claim for backpay, regardless of the extent to which she was officially detailed to the position as branch secretary, must be denied in the absence of any evidence of agency regulation or collective bargaining agreement which requires temporary promotions for

details to higher graded positions. See Albert W. Lurz,
61 Comp. Gen. 492 (1982).

Milton J. Jester

Acting Comptroller General
of the United States