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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Bonnie B. Robinson
File: B-247754
Date: August 20, 1992

DIGEST

Employee's position was reclassified from grade GS-6 to grade GS-7 incident to agency position classification audit. Agency must promote qualified employee within a reasonable time or remove her from the position. Here agency delayed promoting employee to grade GS-7. Employee is entitled to retroactive promotion beginning with the fourth pay period after the date of the position reclassification.

DECISION

Ms. Bonnie B. Robinson, an employee of Army Troop Support Agency, Department of the Army (Army), appeals our Claims Group's disallowance¹ of her claim for retroactive promotion and backpay as a result of a reclassification action by her agency wherein her position was upgraded from grade GS-6 to GS-7. For the reasons stated below, we find that Ms. Robinson is entitled to a retroactive promotion effective as of the beginning of the fourth pay period after the date of the position reclassification. Therefore, we reverse our Claims Group's disallowance.

The record shows that as of February 27, 1989, Ms. Robinson, a grade GS-6, was serving as a Personnel Liaison Assistant, U.S. Army Troop Support Agency, Directorate of Resource Management, Management and Force Development Division, Fort Lee, Virginia. The position was coded 20157. On that date the position was administratively upgraded (reclassified) to grade GS-9 and given a new job code number 89143. Ms. Robinson had been in grade since May 1986 and the administrative record demonstrates that she was legally qualified for promotion to grade GS-7.

On March 2, 1989, the Program Analyst position code 89143 was changed to position code 89146, at grade GS-7. The record explains that this immediate second reclassification

¹Z-2867454, Jan. 2, 1992.

from grade GS-9 to GS-7 was not based on an audit of the position but rather was "engineered" in the mistaken belief that Ms. Robinson's incumbency was endangered since she did not meet the time-in-grade requirements for a promotion directly from grade GS-6 to GS-9. The Program Analyst position was reclassified a third time based on a desk audit resulting in the position once again being classified at a grade GS-9 but with a new job description coded 90094 with an effective date of December 22, 1989. Ms. Robinson continued to occupy the position and was promoted to grade GS-7 on July 30, 1989, five months after the position had been reclassified to a grade GS-9 level. Although Ms. Robinson was temporarily promoted to grade GS-9 on August 12, 1990, and again on February 24, 1991 (not to exceed September 30, 1991), she has not been permanently promoted to grade GS-9.

The record contains two SF-52 "Request For Personnel Action" forms with authorizing signature dated March 26, 1991, retroactively promoting Ms. Robinson to the position of Program Analyst, GS-345-7, Job Number 89146, effective the first pay period on or after March 2, 1989; and retroactively promoting Ms. Robinson to GS-345-9, Job Number 89143, effective the first pay period after time-in-grade restrictions have been met (first pay period on or after March 2, 1990). These Requests For Personnel Action were accompanied by a memorandum for the Civilian Personnel Officer (CPO) and signed by the Deputy Troop Support Agency in the name of the Commander which stated it to be his decision that Ms. Robinson be retroactively promoted as indicated by the requests after careful review of the findings and recommendations of the investigating officer, the comments of Staff Judge Advocate, and those of the CPO. The CPO never implemented these retroactive promotions in favor of Ms. Robinson.

The general rule is that an employee is entitled only to the salary of the position to which she 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 Marion McCaleb, 55 Comp. Gen. 515 (1975). Since Ms. Robinson was not actually promoted until July 30, 1989, she would ordinarily not be entitled to the grade GS-7 salary until that date.

There is, however, an exception to this rule which applies when the promotion in question is based upon a reclassification of the incumbent's position. In 53 Comp. Gen. 216 (1973), we held that when a position has been reclassified to a higher grade, an agency must within a reasonable time either promote the incumbent, if qualified, or remove her. We further held that the reasonable time

within which the incumbent should be either promoted or removed expires at the beginning of the fourth pay period after the date of the reclassification action. See Keith A. Baker, B-186758, Nov. 3, 1980. In addition, where the incumbent's position has been reclassified by the local activity, the incumbent must be promoted even if the local activity has no authority to promote employees to that grade level because such positions are filled from agency-wide referral records. See Robert L. Bruce, B-173783.154, June 21, 1976. Further, the retention of the incumbent in an upgraded position amounts to a determination by the agency that the incumbent is in fact qualified to perform the duty of the higher grade. See Keith A. Baker, supra.

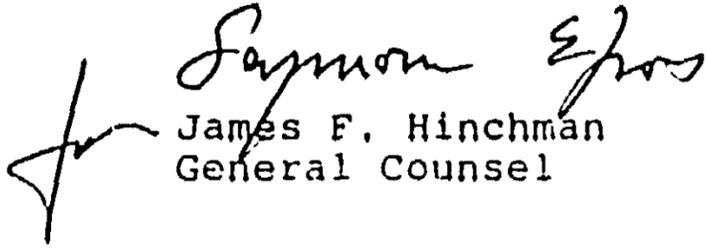
Since Ms. Robinson was the incumbent in the reclassified position and she was retained in that position, it indicates she is qualified to perform the duty of the higher grade. Therefore, she is entitled to have her promotion effected retroactively.

Under the authority of 53 Comp. Gen. 216, which relied on the Office of Personnel Management (OPM) regulations for guidance, Ms. Robinson is entitled to a retroactive promotion because she was not promoted until July 30, 1989, while the reasonable time frame for promotion expired April 24, 1989, the beginning of the fourth pay period after the date of reclassification.² In the absence of an agency regulation mandating an earlier date, we believe that Ms. Robinson became entitled to a promotion at the beginning of the fourth pay period following the reclassification of her position to grade GS-7 and further retroactive promotion to the full reclassified grade level of GS-9 after time-in-grade requirements had been met. Therefore, the promotion to grade GS-7 should be effected retroactively to April 24, 1989, the beginning of the fourth pay period after the date of reclassification, and the promotion to grade GS-9 effected retroactively to April 23, 1990, after time-in-grade requirements would have been satisfied.

Under these circumstances, she is entitled to backpay for the salary differential between grades GS-6 and GS-7 for the period between April 24, 1989, and July 30, 1989, and for the salary of grade GS-9 beginning April 23, 1990.

²See 5 C.F.R. § 511.701(a)(2) (1991); Federal Personnel Manual Supplement 990-2, Subchapter S-8-5c (Inst. 73, April 20, 1984).

Accordingly, we reverse the Claims Group denial of Ms. Robinson's claim for retroactive promotion and backpay.


James F. Hinchman
General Counsel