

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

E-108846

JAN 17 1973

Rolling Hills, California 90274

Dear

We refer to your letter of August 31, 1972, requesting reconsideration of the settlement of our Claims Division, E-628432, September 13, 1971, by which your claim for compensation at a grade level higher than that to which you were appointed for the period February 21, 1966, through April 4, 1970, was disallowed. Apparently the Settlement Certificate issued September 13 did not reach you although a copy thereof was sent with the Claims Division letter of June 10, 1972. It is unfortunate that you were not advised of the action taken by the Claims Division in a timely basis; however, since the original Settlement Certificate was not returned to our Office we cannot explain why you did not receive that certificate shortly after the date on which it was issued.

The information which you have furnished so far as pertinent to our consideration of your request for review indicates that you were appointed to a grade GS-12 position in the Department of the Air Force on February 21, 1966. It appears that the position to which you were appointed had been downgraded from grade GS-13 to grade GS-12 before you were appointed. Although the position in question was again classified to grade GS-13 in 1968, it was filled under the provisions of the merit promotion plan by the appointment of another employee effective September 8, 1968. The record shows that you were reassigned effective August 23, 1968, to a different grade GS-12 position. As a result of a grievance you filed it was determined on March 18, 1970, that your reassignment should have been treated as an adverse action because it involved a reduction in rank. Since you were not given the procedural protections required in adverse action cases the reassignment was determined to be ineffective. The action taken in accordance with the findings in your grievance appeal resulted in the correction of records to show that you had remained in the grade GS-12 position which you had occupied prior to the reassignment. Your promotion to grade GS-13 was effected on April 5, 1970, shortly after your grievance was decided. Your claim for pay at the GS-13 level for the period involved is predicated on your contention that the position to which you were appointed was misclassified at the time and that you have performed duties equivalent to grade GS-13 since the date of your reassignment.

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We point out that neither your agency nor the Civil Service Commission has determined that you were entitled to be restored to a grade GS-13 position as of August 25, 1968, or any other date. In view thereof, we are without authority to allow you back pay on that basis.

The recent decision 50 Comp. Gen. 581 (1971), copy enclosed, to which you refer in your correspondence, involved facts somewhat similar to those in your case, but there it was established that the employee concerned had been appointed to a position which had been intentionally misclassified in a grade lower than the one in which it should have been placed due to discrimination on account of race or sex. It was held that the intentional misclassification and appointment violated the provisions of 5 U.S.C. 7154 and the regulations issued thereunder, which prohibit discrimination because of race, color, creed, sex, or marital status in the administration of personal laws. Accordingly, the appointment action was held illegal and a retroactive adjustment of the employee's compensation was authorized. Since the information you furnished did not contain any allegation that such prohibited discrimination was involved, nor does it show an intentional misclassification of a position to a lower grade, any misclassification of the GS-12 position to which you were appointed cannot serve as a basis for the retroactive adjustment of your compensation under the rules established.

Accordingly, the settlement of the Claims Division which disallowed your claim must be sustained.

Very truly yours,

Paul G. Dembling

For the Comptroller General
of the United States

Enclosure