

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

FILE: B-180918

DATE:

MAY 28 1975

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MATTER OF: Adolf E. Fullgrabe - Retroactive salary increase -
Appointment grade v. job description

DIGEST: Although employee of the U.S. Coast Guard accepted an appointment to grade GS-9, when he entered on duty agency gave him position description for grade GS-11 position and advised him that he was to perform those duties. Agency intended to fill position at GS-9 level to provide training and job familiarization and employee was promoted to a GS-11 after 1 year. During initial year agency stated that he did not perform at GS-11 level. Appointment at GS-9 was not an unjustified or unwarranted personnel action; therefore, backpay claim for retroactive adjustment of salary is denied.

This matter concerns an appeal from a settlement by our Transportation and Claims Division which denied the claim of Adolf E. Fullgrabe, a civilian employee of the United States Coast Guard in Cleveland, Ohio, for retroactive salary adjustment. Mr. Fullgrabe stated that while he received an appointment to a grade GS-9 position, he qualified for, and was instructed to perform the duties of a grade GS-11 position.

In summary, the record shows that in April 1969 the Coast Guard requested the Civil Service Commission to furnish a certificate of eligibles for a grade GS-9 position, Electrical Engineer. The claimant's rating and certification was requested "if within reach of the register." In May 1969 the claimant was certified as eligible for said position; he was selected and appointed effective June 9, 1969. The position was identified as "PD No. 9-666IA" and was at the grade GS-9 level. Two days after entering on duty, a supervisory official gave the claimant Position Description No. 9-666IA-2 and informed him that it was "the official written statement of duties" he was to perform in his job. This description was identified as one for a GS-11 position, and claimant contends that he performed the duties specified in the written description.

The Coast Guard has advised us that its intent was to fill the subject position at the GS-9 level in order to provide the claimant with a period, under close supervision, of familiarization and training with the duties and responsibilities of the position.

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For this reason, the agency requested a certificate of eligibles for a GS-9 position. The agency states further that claimant was advised of these circumstances before he was appointed as a GS-9. The record includes a copy of a letter dated May 13, 1969, from the claimant to a Coast Guard Personnel Officer in which the claimant expressed his understanding that he would be appointed to "grade GS-9, with promotion to GS-11 after one year or sooner, depending upon my satisfactory performance on the job." The agency states that claimant did not perform at the GS-11 level during his first year; however, he was promoted to that grade effective June 14, 1970.

The claimant contends that his appointment at the GS-9 level was an unwarranted or unjustified personnel action resulting in a reduction of his pay for which he is entitled to backpay under 5 U.S.C. § 5596 (1970). He also cites 5 U.S.C. §§ 5102 and 5333 (1970) as supporting his view that the appointment at grade GS-9 should be retroactively considered as made at grade GS-11.

We have considered claimant's contention that his appointment at grade GS-9, rather than grade GS-11, was an unwarranted personnel action calling for the payment of backpay under 5 U.S.C. § 5596 (1970); however, the record does not support such a determination. In order to receive backpay under that statute, the loss of pay must be the direct result of an unjustified or unwarranted personnel action. Cf. 54 Comp. Gen. 312 (1974); 54 *id.* 403 (1974). We have previously discussed the Coast Guard's reasons for making the appointment at grade GS-9 and claimant's acceptance of the appointment at that grade. In view of the circumstances surrounding the appointment and the agency's deliberate actions to carry out its intent to appoint claimant at a grade GS-9, we cannot find that his appointment at the GS-9 level was an abuse of administrative discretion, notwithstanding the fact that the agency erred in providing a GS-11 job description, rather than a GS-9 description. In other words, the lower rate of pay is not directly attributable to the inaccurate job description but rather to the leave at which he was appointed, which we find to be a proper personnel action. Therefore, the requirements of the backpay statutes, supra, are not met.

The claimant's references to section 5333 and the definition in section 5102 of title 5, United States Code, are inapposite. Section 5333 merely sets forth the general rule that a newly appointed

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employee shall be placed "at the minimum rate of the appropriate grade." This does not grant a new Federal employee any vested right to be appointed to a grade level that is higher than considered appropriate by the agency making the appointment if it has properly classified the position according to classification standards and procedures prescribed by the United States Civil Service Commission. See 5 U.S.C. §§ 5105-5107 (1970). Subsection 5102(a)(3) states that "position" means the work, consisting of the duties and responsibilities, assignable to an employee. The definition does not set forth any specific duties of a position and those must be determined from the facts on an individual case basis. Furthermore, the Code provisions cited by the claimant do not stand for the principle that simply furnishing an employee with a written job description for a higher level position retroactively converts his prior appointment at a lower grade to an appointment at the higher grade specified on the job description. We are not aware of any legal basis for such a proposition in circumstances where, as here, (1) the agency in its discretion made the appointment at a lower grade than was required under its existing position authorizations in order to provide training to the appointee and (2) the appointee was advised in advance of the agency's proposed action and accepted the appointment at the lower grade, such acceptance being evidenced by a letter signed by the prospective appointee.

On the basis of the foregoing we conclude that Mr. Fullgrabe's claim may not be allowed; therefore, the action of our Transportation and Claims Division denying his claim is hereby sustained.

R. F. KELLER

Deputy Comptroller General
of the United States