

DOCUMENT RESUME

02305 - [A1602581]

[Claim for Retroactive Promotion and Backpay]. B-185730. June 1, 1977. 3 pp.

Decision re: Raymond F. Kennedy: by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Army.

Authority: 55 Comp. Gen. 539. 55 Comp. Gen. 785. 53 Comp. Gen. 216. B-183086 (1977). Testan v. United States, 424 U.S. 392 (1976).

An employee, classified as a grade GS-13, alleged that he performed grade GS-14 duties and was wrongfully denied promotion. The claim for retroactive pay was denied, since the record failed to indicate the establishment of the higher graded job classification to which the employee was assigned.

(Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20540

*Civ. Per.
Volpe.*

FILE: B-185730

DATE: June 1, 1977

MATTER OF: Raymond F. Kennedy - Claim for Retroactive
Promotion and Backpay

DIGEST: Employee, classified as grade GS-13, alleges that he performed grade GS-14 duties and was wrongfully denied promotion. Claim for retroactive pay is denied. Record fails to indicate establishment of higher graded job classification to which employee was assigned. B-183086, March 23, 1977, 56 Comp. Gen. _____, and 53 Comp. Gen. 216 (1973) are not applicable.

This action is taken pursuant to a request for reconsideration of the denial on December 3, 1975, by our Claims Division of the claim of Mr. Raymond F. Kennedy for backpay believed due as a former employee of the Department of the Army.

Mr. Kennedy was employed at the Springfield Armory, Springfield, Massachusetts, in the position of Administrative Officer, grade GS-13, from January 20, 1966, to April 30, 1968, when a reduction-in-force action terminated Mr. Kennedy's appointment. He was then given a temporary appointment as an Administrative Officer, grade GS-13, at the Watervliet Arsenal, Watervliet, New York, until the date of his retirement, February 28, 1970. Mr. Kennedy contends that he was appointed as Acting Chief of the Services Division, Springfield Armory, on July 6, 1967. In this capacity he alleges that he performed duties and responsibilities equivalent or identical to a Program Manager, grade GS-14, for the period July 6, 1967, until the date of his retirement, February 28, 1970. Mr. Kennedy claims additional compensation for the period in which he allegedly performed the duties of a grade GS-14 position, but only received compensation for a grade GS-13 position. Also, he states that the reason for the failure of his promotion to a higher grade was related to a moratorium on personnel actions arising from the reduction-in-force incident to the base closure.

In support of his claim, Mr. Kennedy has presented as evidence an Application To Fill Vacancy for the position of Program Manager, grade GS-14. The application contains Mr. Kennedy's name and is dated July 17, 1967. In addition, Mr. Kennedy has furnished a copy of Springfield Armory Special Orders Number 53, dated July 6, 1967, assigning him to the position of Acting Chief, Services Division,

effective July 7, 1967. The claim is further supported by two affidavits which, in effect substantiate Mr. Kennedy's assignment as Acting Chief, Services Division.

Our Claims Division disallowed Mr. Kennedy's claim because, while he apparently performed the duties of a GS-14 position, an employee is entitled only to the compensation of the position to which he is appointed, a personnel action may not be made retroactively effective so as to increase the right of an employee to compensation, and Mr. Kennedy had not been promoted to GS-14 during the period of his claim. Mr. Kennedy appeals on the basis of 55 Comp. Gen. 539 (B-183086, December 5, 1975) and 55 Comp. Gen. 785 (B-184990, February 20, 1976). Those decisions hold that when an employee is detailed to a higher grade position for a period in excess of 120 days without obtaining the approval of the extension from the Civil Service Commission, he is entitled to a retroactive temporary promotion, if qualified for such promotion under law and regulation, and backpay beginning 121 days after the beginning of his detail. Mr. Kennedy also refers to our decision 53 Comp. Gen. 216 (B-179216, October 9, 1973). That decision holds that when an employee's position is reclassified upward, his agency must either promote him or remove him from that position within a reasonable time.

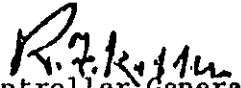
Subsequent to the rendition of our decisions 55 Comp. Gen. 539 and 785, supra, the Supreme Court held in Testan v. United States, 424 U.S. 392 (1976), that neither the Classification Act nor the Back Pay Act creates a substantive right in an employee to backpay for the period of an alleged wrongful classification of his position. After a thorough examination of Testan we found it applied only to classification actions and affirmed our decisions 55 Comp. Gen. 539 and 785 regarding excessively long details in decision B-183086, March 23, 1977, 56 Comp. Gen. _____.

For the purposes of our detail decisions cited above the position must be an established one, classified under an occupational standard to a grade or pay level. In the instant case the record indicates that during the period for which additional pay is claimed Mr. Kennedy was appointed to positions which were classified as GS-13 positions at all times. While he applied for the position of Program Manager, GS-14, the record indicates that the efforts of Mr. Kennedy and the Legal Office at Watervliet Arsenal to locate either a copy of the job description of the alleged GS-14 position or its evaluation have been fruitless. Also, there are no records indicating that the establishment of such a position was

B-185730

delayed by an action such as a moratorium in filling positions of higher grades. Under such circumstances we cannot hold that a higher grade position was established to which Mr. Kennedy could have been given a temporary promotion and backpay under the holdings in the detail decisions cited. Also, since there is insufficient evidence to show that a GS-14 position was established, it follows that our decision 53 Comp. Gen. 216, supra, does not afford Mr. Kennedy any basis for additional pay.

Accordingly, we must sustain the action of our Claims Division in disallowing Mr. Kennedy's claim.


Deputy Comptroller General
of the United States