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**DECISION**



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

**FILE:** B-189690

**DATE:** February 16, 1978

**MATTER OF:** Sam Friedman, Edwin C. Baker, and  
Russell A. Holmes, Jr. - Claims for  
Backpay

**DIGEST:**

1. Employees claim entitlement to retroactive temporary promotions and backpay for periods they were detailed to and performed duties of higher level positions. Claims were received in GAO on July 18, 1977. Under 31 U.S.C. 71a (Supp. V, 1975), claims against Government are barred unless received in GAO within 6 years from date claims accrued. For purposes of 31 U.S.C. 71a, filing of claim with employing agency does not constitute filing with GAO. Therefore, we may not consider any element of claims accruing before July 18, 1971.
2. Employee Holmes claims entitlement to retroactive temporary promotion with backpay under GAO Turner-Caldwell decision, 55 Comp. Gen. 539, for period he was detailed from grade GS-13 position to grade GS-15 position (June 1971 - May 1973). Employee may not be given retroactive temporary promotion to grade GS-15 position because he did not satisfy Whitten Amendment (5 U.S.C. 3101 note) time-in-grade requirements. However, employee is entitled to a retroactive temporary promotion to the highest grade to which he could have been promoted under Whitten Amendment and other applicable requirements which in Holmes' case is grade GS-14.

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This action is in response to a letter of July 14, 1977, submitted by Mr. Harold F. Thorne, an authorized certifying officer, Bureau of Mines, Department of the Interior, requesting a decision on the claims of three employees, Sam Friedman, Edwin C. Baker, and Russell A. Holmes, Jr., for retroactive temporary promotions with backpay for periods they were detailed to higher grade positions. The certifying officer forwarded the claims to our Office for decision because questions have arisen as to the applicability of the 6-year statute of limitations to all or a part of each claim.

Regarding the claim of Mr. Sam Friedman, a former employee of the Bureau of Mines, the record shows that he was a Supervisory Chemical Engineer, grade GS-13. He was detailed to the position of Supervisory Chemical Engineer, grade GS-14, and served as Acting Project Coordinator of the Exploratory Engineering Division from March 9, 1970, to January 29, 1971. A claim for retroactive temporary promotion with backpay was submitted on his behalf with the Bureau of Mines on September 2, 1976. The claim was forwarded by the Bureau of Mines, and was received in our Office on July 18, 1977.

Pursuant to 31 U.S.C. 71a (Supp. V, 1975), any claim or demand against the United States is barred unless it is received by the General Accounting Office within 6 years from the date such claim first accrues. No exception is made for claims for backpay in connection with improper details or otherwise. See, for example, Matter of Edward Rothenberg, B-137234, December 8, 1976, and 55 Comp. Gen. 785 (1976). Although Mr. Friedman's detail was terminated on January 29, 1971, his claim was not received in this Office until July 18, 1977. Pursuant to 31 U.S.C. 71a, a claim, not received in the General Accounting Office within 6 years after the date such claim first accrues, shall be forever barred. Receipt by the employing agency does not, under the terms of 31 U.S.C. 71a, serve to toll the statute of limitation. Matter of Robert W. Poisal, B-185748, July 12, 1976. Accordingly, no portion of Mr. Friedman's claim may be considered for payment since all of the claim had accrued prior to July 18, 1971, more than 6 years before the claim was received by our Office.

Regarding the claim of Mr. Edwin C. Baker, the record shows that he was a Supervisory General Engineer, grade GS-13, with the Bureau of Mines, Helium Operations, Amarillo, Texas. He was detailed to the

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position of Acting Chief, Branch of Engineering, a Supervisory General Engineer, grade GS-14 position, from July 27, 1970, to August 7, 1971. On August 8, 1971, he was promoted to that position. He submitted a claim for retroactive temporary promotion with backpay for the entire period of the detail to the Bureau of Mines on June 21, 1977. The claim was forwarded by the Bureau of Mines and was received in our Office on July 18, 1977. Therefore, in accord with the above discussion on the statute of limitations and the cases previously cited, any element of the claim accruing before July 18, 1971, is forever barred. The part of Mr. Baker's claim for a retroactive temporary promotion and backpay for the period of the detail extending from July 18, 1971, to August 7, 1971, may properly be considered.

In Matter of Everett Turner and David L. Caldwell, 55 Comp. Gen. 539 (1975), affirmed at 56 Comp. Gen. 427 (1977), we held that employees detailed to higher grade positions for more than 120 days, without Civil Service Commission approval, are entitled to retroactive temporary promotions with backpay for the period beginning with the 121st day of the detail until the detail is terminated. Subsequently, in Matter of Marie Grant, 55 Comp. Gen. 785 (1976), we ruled that the Turner-Caldwell decision applied retroactively to extended details to higher grade positions subject only to the time limitation of 6 years on filing claims imposed by 31 U.S.C. 71a.

Appropriate officials of the Bureau of Mines should make a determination on the July 18-August 7, 1971, portion of Mr. Baker's claim based upon the complete personnel records in their possession and award him a retroactive temporary promotion with backpay if required under the guidelines set forth in the above-cited decisions of this Office.

Regarding the claim of Mr. Russell A. Holmes, Jr., the record shows that he was a Supervisory Petroleum and Natural Gas Engineer, grade GS-13. Effective June 21, 1971, Mr. Holmes was designated as Acting Chief, Branch of Helium Resources. The Branch Chief position was classified at the grade GS-15 level. This detail was terminated on May 18, 1973. He submitted a claim for a retroactive temporary promotion with backpay for the entire period of his detail to the Bureau of Mines on June 23, 1977. The claim was forwarded by the Bureau of Mines and was received in our Office on July 18, 1977. As previously indicated, that portion of the claim covering the period from June 21 through July 17, 1971, is barred by the statute of limitations. 31 U.S.C. 71a.

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The Bureau of Mines recognizes in its submission that the claimant would not be entitled to a retroactive temporary promotion from grade GS-13 to grade GS-15 by virtue of the time-in-grade requirements of the Whitten Amendment, 5 U.S.C. 3101 note, inasmuch as there was an intervening grade GS-14 position between the aforementioned positions. However, the agency indicates that if it actually had given Mr. Holmes a temporary promotion in June 1971, instead of placing him on detail, it would have prepared a statement of differences to the grade GS-15 position and reconstituted it at the grade GS-14 level. The Bureau of Mines states that it desires to take such action retroactively on Mr. Holmes' claim so that he can be awarded a retroactive temporary promotion to grade GS-14.

For the purposes of implementing the remedy provided for overlong details to higher grade jobs by our Turner-Caldwell decisions, we shall treat an employee who is detailed to a position more than one grade above his prior position in the same way we would treat an employee who has been detailed upward only one grade. Therefore, an employee, who is detailed two or more grades above his regular grade, is entitled to a retroactive temporary promotion to the highest grade to which he could have been promoted under the Whitten Amendment and other applicable requirements.

Accordingly, Mr. Holmes is entitled to a retroactive temporary promotion to GS-14 beginning on the 121st day of his assignment to be Acting Chief, Helium Resources Branch. Moreover, he is entitled to a retroactive temporary promotion to GS-15 beginning 1 year after the detail started. At that time he is considered as having served 1 year in the next lower grade and the requirements of the Whitten Amendment have been satisfied.

Thus, the claims of Sam Friedman, Edwin C. Baker, and Russell A. Holmes, Jr., for retroactive temporary promotions with backpay are to be settled in accordance with the principles set forth above.

  
Deputy Comptroller General  
of the United States