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Botsford  
C.P.

**DECISION**



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

**FILE:** B-190420

**DATE:** March 7, 1978

**MATTER OF:** Leo A. Fitzgerald - Retroactive Temporary  
Promotion and Backpay

**DIGEST:** Employee of Defense Mapping Agency, detailed to higher grade position from August 1, 1972, to May 4, 1974, is entitled to retroactive temporary promotion and backpay from July 22, 1973, when he satisfied Whitten Amendment time-in-grade requirement for promotion to next higher grade, until the end of his detail. Although position to which he was detailed was subsequently downgraded because duties would not support higher grade, employee is entitled to promotion to higher grade since classification actions are not retroactively effective, except in circumstances not applicable here.

This is in response to a letter dated October 13, 1977, from the Defense Mapping Agency concerning the entitlement of Mr. Leo A. Fitzgerald, an Agency employee, to retroactive temporary promotion and resulting backpay.

The record shows that Mr. Fitzgerald was hired by Headquarters, Defense Mapping Agency as a grade GS-14 Security Specialist, effective July 23, 1972. He was verbally detailed to the vacant position grade GS-15, of Chief, Collateral Security Division, on August 1, 1972, and served as Acting Director of that Division until May 4, 1974.

On May 4, 1974, the grade GS-15 Chief, Collateral Security Division position was reclassified as a grade GS-14 position and Mr. Fitzgerald was reassigned from his original grade GS-14; Security Specialist position to this new position to which he had formerly been detailed when it was classified at the higher level. That position had been originally classified as Security Officer, GS-15 based on the supervision of three subordinate positions. It was reclassified to GS-14 apparently because one of the three positions which the Chief was to supervise was eliminated.

Mr. Fitzgerald is claiming entitlement to a temporary retroactive promotion and backpay for the period from August 1, 1972, to May 4, 1974, in accordance with Matter of Everett Turner and

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David L. Caldwell, B-183086, December 5, 1975, 55 Comp. Gen. 539.  
In that decision 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 back-pay for the period beginning with the 121st day of the detail until the detail is terminated.

In Matter of Reconsideration of Everett Turner and David L. Caldwell, B-183086, March 23, 1977, 56 Comp. Gen. 427 we affirmed our earlier decision and stated:

"It is necessary, however, that the employee satisfy the requirements for a retroactive temporary promotion. In this connection, certain statutory and regulatory requirements could affect the entitlement of an employee otherwise qualified for corrective action as the result of an improper extended detail."

As examples of these requirements we mentioned the time-in-grade requirements of the "Whitten Amendment" 5 U.S.C. 3101, note, and the provision of 5 U.S.C. 3324 governing appointments to super-grade positions.

The agency has questioned whether Mr. Fitzgerald satisfies these criteria since the grade GS-15 position to which he was detailed was subsequently downgraded to the GS-14 level after his detail was terminated. In addition, the agency reports that Mr. Fitzgerald did not meet the Whitten Amendment requirement for promotion to a GS-15 until July 22, 1973.

Under the Classification Act of 1949, codified in 5 U.S.C. 5101 et. seq., (1970), and the implementing regulations found in Part 511 of title 5 of the Code of Federal Regulations (C.F.R.), an employee's agency and the Civil Service Commission are primarily responsible for the classification of duties of the employee's position. Section 511.701(a) title 5 C.F.R. provides that the effective date of a classification action taken by an agency is the date the action is approved in the agency or a subsequent date specifically stated. Section 511.701(b) provides that a classification decision made by a certificate

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issued by the Commission takes effect not earlier than the date of receipt of the certificate in the agency, unless a subsequent date is specifically stated in the certificate. The sole provision for a retroactive effective date for classification is where there is a timely appeal which results in the reversal, in whole or part, of a downgrading or other classification action which had resulted in the reduction of pay. See 5 C.F.R. 511.703. The reclassification of a position is prospective and may not be made on a retroactive basis other than as provided for in 5 C.F.R. 511.703. Accordingly, while the employee was detailed to the position, it is presumed he performed duties at the level at which the position was officially classified. Therefore Mr. Fitzgerald would not be disqualified for a retroactive promotion on this basis.

Since the position of Chief of the Collateral Security Division was officially classified at the GS-15 level while Mr. Fitzgerald was detailed to it, he is entitled to a retroactive temporary promotion and backpay. However, Mr. Fitzgerald is not entitled to a retroactive temporary promotion and backpay until he satisfied the Whitten Amendment time-in-grade requirements prescribed in 5 U.S.C. 3101, note. He did not satisfy the requirements of the Whitten Amendment, until July 22, 1973, hence he is only entitled to a retroactive temporary promotion to grade GS-15 and backpay from that date until his detail was terminated on May 4, 1974.

*R. F. K. 114*  
Deputy Comptroller General  
of the United States