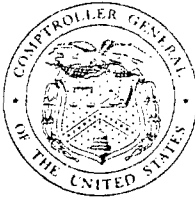


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**DECISION**



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

[Request for Retroactive Temporary Promotion <sup>9286</sup>]

FILE: B-192084

DATE: February 23, 1979

MATTER OF: Thomas Sherman--Retroactive Promotion--  
Extended Detail

DIGEST: A grade GS-15 employee, who was officially detailed to an established, classified, higher level position on May 25, 1977, and who was approved as fully qualified for promotion to grade GS-16 in that position by the Civil Service Commission (CSC) on September 12, 1977, is entitled to a retroactive temporary promotion to grade GS-16 for the period commencing with 121st day of the detail (September 23, 1977), since CSC did approve the employee's qualifications for promotion but did not approve or sanction his extended detail as a grade GS-15 to a higher level position. Matter of Turner-Caldwell, 55 Comp. Gen. 539 (1975); Matter of William Rankin, Jr., 56 Comp. Gen. 432 (1977).

This action involves a request for an advance decision from Mr. Anthony J. Lapallo, Acting Director, Personnel Systems and Payroll Division, Department of Housing and Urban Development (HUD), as to whether a retroactive temporary promotion may be granted to Mr. Thomas Sherman, a grade GS-15 employee, incident to his extended detail to a higher grade level position.

Mr. Sherman was assigned on a temporary basis to act as the Director, Office of Assisted Housing Management, HUD, effective December 13, 1976. This was a new office, created as the result of a reorganization within HUD. At that time, no grade classification had been assigned to the post, and Mr. Sherman merely undertook the performance of "unclassified duties." However, on May 25, 1977, the Civil Service Commission (CSC) classified the post as a grade GS-17 position, thus converting it to an established, classified Federal position. Subsequently, on September 12, 1977, CSC reclassified the position to the grade GS-16 level, and simultaneously approved Mr. Sherman's qualifications for promotion to grade GS-16 in that position. It appears that Mr. Sherman was not then promoted due to a review of HUD's staffing procedures, and in March 1978 CSC directed that candidates for the position be reevaluated under corrected merit promotion program procedures. In taking such action, CSC authorities emphasized that this in no way reflected upon Mr. Sherman, and it was said he still met the basic qualifications of the position.

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Mr. Sherman's detail to the position of Director, Office of Assisted Housing Management, was terminated effective March 10, 1978. It is indicated that during the entire period of the detail he was classified and paid as a grade GS-15 employee. It is further indicated that although CSC determined Mr. Sherman was qualified for promotion to grade GS-16, CSC did not approve his detail as a grade GS-15 employee to the higher grade level position.

In the request for an advance decision, it is noted that prior decisions of this Office have directed temporary retroactive promotions be granted to qualified employees detailed without CSC approval to higher grade level positions for extended periods, with specific reference to Matter of Turner-Caldwell, 55 Comp. Gen. 539 (1975), and Matter of William Rankin, Jr., 56 Comp. Gen. 432 (1977). It is also noted that Federal Personnel Manual (FPM) Supplement 305-1, dated September 30, 1977, generally provides that CSC approval of an employee's qualifications for promotion to a "supergrade" position, i. e., grade GS-16 and above, is valid for only 60 days. It is therefore, in effect, questioned whether Mr. Sherman is entitled to a retroactive temporary promotion incident to his extended detail to the higher grade level position, and if so, for what portion of the detail.

There are innumerable instances in the Federal service where employees of a lower classification perform duties of a higher classification, but as a general rule the employee is not entitled to the pay of the higher position until he has been duly appointed or promoted to it. United States v. Testan, 424 U.S. 392 (1976); Coleman v. United States, 100 Ct. Cl. 41 (1943), Matter of Marion McCaleb, 55 Comp. Gen. 515 (1975). Hence, an employee may not gain entitlement to a retroactive promotion with backpay simply on the basis that he has performed duties ordinarily reserved to persons in a higher grade position.

We have held, however, that in certain circumstances an employee may be entitled to a retroactive promotion if he is officially detailed to a higher level position for an extended period. A detail is the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to his regular duties at the end of the detail. See Federal Personnel Manual, chapter 300, subch. 8,

para. 8-1. In Matter of Turner-Caldwell, 55 Comp. Gen. 539, supra, and Matter of Reconsideration of Turner-Caldwell, 56 Comp. Gen. 427 (1977), it was held that an employee officially detailed to an established, classified, higher level position for more than 120 days without CSC approval, is entitled to a retroactive temporary promotion with backpay for the period beginning with the 121st day of the detail until the detail is terminated, provided the employee was otherwise qualified and could have been promoted into the position at that time.

Subsection 3324(a), title 5, United States Code (1976), provides that an appointment to a position in grade GS-16, 17, or 18 may be made only on approval of the qualifications of the proposed appointee by CSC. Thus, in Matter of William Rankin, Jr., 56 Comp. Gen. 432, supra, it was held that a grade GS-15 employee detailed to a grade GS-17 position for an extended period, was not entitled to a retroactive temporary promotion in the absence of a CSC determination at the time of the detail that he was then qualified for promotion to the GS-17 position.

With respect to determinations made by CSC approving an employee's qualifications for promotion to grades GS-16 through 18, subsection A-4.f., Appendix A-4, FPM Supplement 305-1, September 30, 1977, provides as follows:

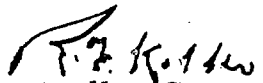
"f. Taking action within 60 days. Unless otherwise indicated, Commission approval is valid for 60 calendar days beginning on the date of approval of the CSC Form 917. Action may not be taken after 60 days unless the Commission approves an extension of the time limit."

In the present case, it appears that Mr. Sherman entered on detail to the established, classified, higher level position of Director, Office of Assisted Housing Management, HUD, on May 25, 1977, the date CSC acted to classify that post as a grade GS-17 position. On the 121st day of such detail, September 23, 1977, CSC had reclassified the position to the grade GS-16 level and had approved Mr. Sherman as being qualified for promotion to grade GS-16. However, CSC had not approved or sanctioned Mr. Sherman's continued detail as a grade GS-15 employee to the higher grade position. Hence, it is our view that he is entitled to a retroactive temporary promotion to grade GS-16 commencing September 23, 1977, and

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ending on the date the detail was terminated, March 10, 1978. In that connection, it is also our view that the provisions of FPM Supplement 305-1, generally limiting appointment action under CSC qualification approvals to 60 days, need not be applied to limit the length of Mr. Sherman's temporary promotion, since he became entitled to the promotion within the prescribed period and was never subsequently found to be unqualified to hold the grade GS-16 position.

Accordingly, Mr. Sherman is entitled to a retroactive temporary promotion to grade GS-16 for the period September 23, 1977, to March 10, 1978. Backpay should be computed in accordance with instructions contained in 5 C.F.R. Part 550, subpart H.

  
Deputy Comptroller General  
of the United States