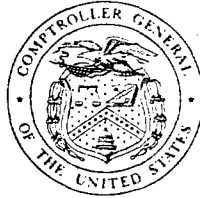


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DECISION



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

10,110

FILE: B-193618

DATE: May 9, 1979

PN

MATTER OF: Richard M. Bartol - [Claim for Temporary Promotion
While Performing Higher Level Duties]

DIGEST: Employee claims retroactive temporary promotion and backpay while performing higher level duties in light of Turner-Caldwell decisions. Claim is denied since employee has failed to meet burden of proof to support claim that he was detailed to and performed the duties of the higher grade position.

Prev. settlement was sustained

This action is in response to the appeal by Mr. Richard M. Bartol of our Claims Division settlement dated July 14, 1978, denying his claim for a retroactive temporary promotion and backpay for the period that he performed higher level duties. The question presented for our decision is whether Mr. Bartol has presented sufficient evidence to document the alleged detail.

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Mr. Bartol was employed by the Veterans Administration Hospital in Lebanon, Pennsylvania, as an Occupational Therapy Assistant, grade GS-5, and he claims that from January 24, 1973, to June 1, 1974, he performed the duties of the position of Occupational Therapy Assistant, grade GS-6, in the absence of the incumbent of that position, Mr. Melvin A. Ruppenthal. The agency denied Mr. Bartol's claim on the ground that he had not submitted acceptable documentation to substantiate the detail. Our Claims Division denied the claim on the basis that although Mr. Bartol may have performed some higher level duties he was not actually detailed to a position classified at a higher grade.

On appeal, Mr. Bartol has submitted an affidavit that he was informally detailed to the higher grade position by his supervisor. In addition, the record contains statements from five of Mr. Bartol's fellow employees, including the incumbent of the position, Mr. Ruppenthal, to the effect that Mr. Bartol performed the duties of the higher level position.


Our Office has held that where an employee is detailed to a higher grade position and the agency fails to seek Civil Service Commission approval to extend the detail for a period beyond 120 days, the agency must award the employee a retroactive temporary promotion and backpay if he continues to perform those higher grade

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duties. Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed at 56 id. 427 (1977). As is the case with any claim against the United States, the burden is on the claimant to establish the liability of the United States and the claimant's right to payment. See 4 C.F.R. § 31.7 (1978). With regard to what constitutes acceptable proof of a detail, Civil Service Commission Bulletin No. 300-40, May 25, 1977, states that acceptable documentation includes official personnel documents or official memoranda, written statements from supervisors or other management officials who were familiar with the employee's work, or a decision under established grievance procedures.

The evidence in this case is not sufficient to establish that Mr. Bartol did in fact perform the duties of the higher grade position. There are no official records of any detail to the higher position. While Mr. Bartol has submitted statements from fellow employees that he performed higher grade duties, his supervisor states that he did assign Mr. Bartol some additional clerical responsibilities but at no time did he consider Mr. Bartol as performing the full range of duties of the higher grade position. Also, the hospital chief of personnel states that no grievance was brought on behalf of Mr. Bartol for violation of a labor agreement with Local 1966, American Federation of Government Employees, providing for the temporary promotion of any employee covered by the agreement who was detailed to a higher grade position for more than 20 workdays. Therefore, we conclude that Mr. Bartol has not met his burden of establishing the liability of the United States and his right to payment as provided in 4 C.F.R. § 31.7. See John R. Figard, B-181700, January 18, 1978.

Accordingly, we sustain our Claims Division settlement denying Mr. Bartol's claim for additional compensation for performing higher level duties.


Deputy Comptroller General
of the United States