

**DECISION**



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

FILE: B-193723

DATE: September 21, 1979

MATTER OF: Loretta T. Smith - [Claim for retroactive promotion and backpay]

- DIGEST:
1. Employee claims retroactive temporary promotion and accompanying backpay under Turner-Caldwell decision incident to several details to regional offices. Where none of the details was in excess of 120 days, the employee is not entitled to a retroactive promotion even if details were to higher grade positions. Each detail is a separate personnel action and for the purpose of applying Turner-Caldwell decision each detail must have exceeded 120 days.
  2. Employee claims work she performed constituted detail to a higher grade position and claims retroactive temporary promotion and backpay under decision in Turner-Caldwell. Where the employee has not provided evidence to show that she was assigned or detailed to a higher grade position, there is no basis to allow a retroactive temporary promotion under Turner-Caldwell.
  3. Employee who was promoted to position of Hearings and Appeals Analyst, GS-13, on November 23, 1975, requests that promotion be made retroactive to February 1, 1975. Where the record does not show any administrative policy or regulation which would have required that she be promoted at a specified time, there is no basis for a retroactive promotion.

Ms. Loretta T. Smith, an employee of the Department of Health, Education, and Welfare, Social Security Administration, has appealed from a settlement issued by our Claims Division on October 12, 1978, which disallowed her claim for a retroactive promotion and accompanying backpay for the period from February 1, 1975, through November 22, 1975. The Claims Division's disallowance is sustained as the record neither establishes that the

B-193723

claimant was detailed to a higher grade position in excess of 120 days nor that she was entitled to be promoted at a specified time.

The file shows that from November 25, 1973, until her promotion to a grade GS-13 position on November 23, 1975, Ms. Smith was employed as a Hearings and Appeals Analyst, GS-12 by the Social Security Administration, Bureau of Hearings and Appeals, Arlington, Virginia. Ms. Smith states that she had a right to be promoted as of February 1, 1975. She alleges that during the period from February 1, 1975, to November 23, 1975, she met all the criteria for promotion to a grade GS-13 position and was in fact performing at that grade level and that, accordingly, the Bureau unjustly denied her a promotion during that time. DLG 02834

Ms. Smith also claims entitlement to a retroactive temporary promotion and backpay on the basis that she was improperly detailed to a higher grade position for the period from February 1, 1975, to November 23, 1975. She states that she was detailed to the Bureau's Pittsburgh, Pennsylvania, regional office from June 2, 1975, through August 1975, and to the Flint, Michigan and Cleveland, Ohio regional offices from September 1975 through late October 1975. She states that while on duty at Arlington and while detailed to the regional offices, she performed the duties of a GS-13 position. She contends that her performance of higher grade duties constituted an improper extended detail to a higher grade position and that accordingly she should receive a retroactive temporary promotion and accompanying backpay for the period, under our Turner-Caldwell decisions. 55 Comp. Gen. 539 (1975) and 56 id. 427 (1977).

In our Turner-Caldwell decisions, we held that an agency's discretion and authority to retain an employee on detail to a higher grade position continues no longer than 120 days and that the agency must either seek prior approval of the Civil Service Commission for an extension of the detail or temporarily promote the detailed employee at the end of the specified time period. Where the agency fails to seek prior approval of the Commission to extend the period of an employee's detail in a higher grade position, corrective action in the form of a retroactive temporary

B-193723

promotion with backpay is required as of the 121st day of the detail, provided the employee was otherwise qualified and could have been promoted into the position at that time.

We have held that where an employee is detailed two or more times each detail is a separate personnel action and for the purpose of applying our Turner-Caldwell decisions each detail must have exceeded 120 days before a determination may be made that the employee must receive a retroactive temporary promotion. See William G. Atherton, B-173783.200, July 31, 1978, and James J. Ford, 57 Comp. Gen. 605 (1978). Accordingly, Ms. Smith is not entitled to a retroactive temporary promotion incident to her details to positions in the Bureau's regional offices, even if those details were to higher grade positions, as none of those details was in excess of 120 days.

Ms. Smith alleges that she performed higher grade duties while at her permanent duty station in Arlington, however, she has provided no evidence to show that she was ever actually temporarily assigned or detailed to fill an established higher grade position. While Ms. Smith may have performed higher grade duties during the period for which she claims backpay, we note that a detail does not occur merely through an employee's performance of a set of duties associated with a higher grade position, but requires assignment of the employee to a particular position. See Stella P. Rasp, B-192640, October 27, 1978, and Patrick J. Fleming, B-191413, May 22, 1978, and September 19, 1978. Since Ms. Smith has provided no evidence to show that she was detailed or assigned to a higher grade position, she has not sustained the burden of proof required to justify an award of backpay under our determination in Turner-Caldwell, supra. See Nathan Lesowitz, B-185766, June 15, 1977. Thus, the general rule applies that an employee is entitled only to the salary of the position to which he is appointed, regardless of the duties he performs. See Fleming, supra.

Concerning Ms. Smith's contention that her promotion on November 23, 1975, should be retroactively effective to February 1, 1975, the general rule is that an administrative change in salary may not be made retroactively effective.

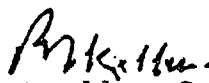
B-193723

in the absence of a statute so providing. 26 Comp. Gen. 706 (1947) and 40 id. 207 (1960).

However, where an administrative or clerical error has prevented a personnel action from taking effect as originally intended, denied an employee a right granted by statute or regulations, or resulted in the failure to carry out a nondiscretionary administrative regulation or policy, a retroactive personnel action may be processed. Such an exception constitutes an unjustified or unwarranted personnel action under the Back Pay Act, 5 U.S.C. § 5596 (1976). Joseph Pompeo et al., B-186916, April 25, 1977; 55 id. 42 (1975); Cf. 58 Comp. Gen. 59 (1978).

There is nothing in the file to show that Ms. Smith was entitled to be promoted at a specific time. While she may have been eligible for promotion prior to November 23, 1975, the record does not show any agency regulation or policy which would have required that she be promoted on a specific date. In such circumstances, the general rule applies that the effective date of a salary change based exclusively on administrative action is the date action is taken by the administrative officer vested with the necessary authority or a subsequent date specifically fixed by him. 21 Comp. Gen. 95 (1941).

In accordance with the above, there is no basis to allow Ms. Smith a retroactive promotion and accompanying backpay, and our Claims Division's denial of her claim is sustained.

  
Deputy Comptroller General  
of the United States