

DECISION



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

12648 Kirby Patrick
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FILE: B-193748

DATE: January 25, 1980

REQUEST FOR

MATTER OF: Robert Creel - Retroactive Temporary Promotion]

DIGEST: Since GS-12 employee did not meet burden of proof by showing that he was detailed to and performed all duties of higher-level position as GS-13 supervisory auditor, he is not entitled to retroactive temporary promotion. Although initially supervisors said he performed at GS-13 level as auditor-in-charge of periodic audits in their write-ups for his quality step increase and performance appraisals, his GS-12 job description states auditors at that grade could be auditors-in-charge on jobs of average complexity. Later it was determined, and supervisors agreed, that employee had been primarily assigned to audits at only GS-12 level of complexity.

Mr. Robert Creel requests reconsideration of his claim for a retroactive temporary promotion with backpay based upon a detail to a position having a higher grade than that at which he was appointed and paid. Our Claims Division denied the claim by Settlement Certificate No. Z-2708027, July 10, 1978.

The issue is whether in the absence of a formal detail, Mr. Creel was actually assigned all of the principal duties of a higher-level position as required for a retroactive temporary promotion under our decision in Matter of Patrick J. Fleming, B-191413, September 19, 1978.

Mr. Creel believes that he is entitled to a retroactive temporary promotion because he considers that he was detailed as a Navy civilian employee between September 18, 1971, and February 16, 1974, to a higher-level position of Supervisory Auditor, GS-13. He was paid during this period as an auditor, grade GS-12, in accordance with the official position to which he was formally assigned with the Naval Audit Service, Southeast Region, Charleston, South Carolina. He states that his immediate supervisor, Mr. J. S. Hooker, Jr., Acting Executive Assistant, Naval Audit Office, Charleston, detailed him to serve as the head of a mobile audit team, which was the GS-13 position Mr. Hooker had occupied before he was reassigned. DLG 0369

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To substantiate his claim Mr. Creel submitted to us copies of statements made by his supervisors purporting to show that he performed at the GS-13 level. In one statement, supporting a quality step increase approved for Mr. Creel in July 1973, Mr. Hooker said that Mr. Creel as an auditor-in-charge of a periodic audit team "had the responsibility and performed the work normally done by a GS-13" during most of the rating period ending March 31, 1973. Mr. Hooker further noted that Mr. Creel "normally supervised the work of 4 to 5 other auditors, junior auditors and auditor trainees." Similarly, in the performance appraisals for the periods February 16 through August 15, 1972, and August 16 through February 15, 1973, Mr. Hooker stated that Mr. Creel had operated as an auditor-in-charge. Also, in the performance appraisal for the period February 16 through July 31, 1973, the reviewer, who was evidently the Officer-in-charge, Naval Audit Office, Charleston, stated:

"During the period of this report Mr. Creel has acted in a capacity normally reserved for a GS-13 supervisory auditor."

However, Mr. Hooker, as well as the present and former Deputy Director of the Southeast Region, have reevaluated the circumstances of Mr. Creel's performance during the claim period. We understand that Mr. Hooker now agrees with the other officials of the Southeast Region that his assessments in 1972 and 1973 concerning Mr. Creel's performance at the GS-13 level are not proof that Mr. Creel was actually assigned all of the principal duties of the GS-13 supervisory auditor position. They determined that most of the periodic (cyclical) audits performed by mobile audit teams were appropriately for a GS-12 auditor-in-charge, such as Mr. Creel. The more complex permanent audit sites and special audits required the GS-13 supervisory auditor. The reevaluation is in an administrative report of the Southeast Region dated July 18, 1979, based upon a review of the case by Mr. Hooker; former Deputy Director of the Southeast Region, Mr. Simmons; and the current Deputy Director. The report was examined in the Office of the Auditor General of the Navy and forwarded to us by letter postmarked November 30, 1979.

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The report points out that the job description applicable to the duties and responsibilities officially assigned Mr. Creel at grade GS-12, specifically stated:

"* * * He may be assigned as the auditor-in-charge on assignments of average complexity.
(Emphasis added.)

But the GS-13 job description that applied to the higher-level duties purportedly assigned to Mr. Creel said that the auditor "usually serves in the capacity of an auditor-in-charge of an organizational element within a Naval Area Audit Service" without the qualification that the audit be of "average complexity." Consequently, Mr. Creel could have been properly limited to a GS-12 if the jobs on which he was an auditor-in-charge were limited to those of "average complexity."

The Southeast Region states that a staffing study showed that only 3 of the 21 audits to which Mr. Creel had been assigned during the claim period were ordinarily considered to be complex enough to warrant the auditor-in-charge being a GS-13. These 3 were among the 13 periodic audits he had been assigned. Eighty percent of periodic (cyclic) audits in the Southeast Region were appropriate for a GS-12 auditor-in-charge. Two of the three more complex periodic audits had either a small audit team, a short duration, or a low number of planned man hours, thus making them appropriate for Mr. Creel's assignment at grade level GS-12 when he was auditor-in-charge. One of the three periodic audits (Naval Station, Guantanamo Bay) was considered appropriate for a GS-13 auditor-in-charge, but Mr. Creel served there only for the short period of May 2 through June 11, 1973. The remaining eight assignments were not periodic audits and Mr. Creel supervised only a segment of these "multiple location" audits which were under the direction of a supervisory level coordinator. The less complex nature of the 21 assignments was fully explained to Mr. Creel in a letter of June 23, 1977, from Naval Audit Service Headquarters. The Southeast Region's report of July 18, 1979, confirms this explanation.

Mr. Creel also says that he performed as auditor-in-charge on audits having the same level of difficulty as those undertaken by GS-13 supervisory auditors. He mentions in particular Mr. Hooker before he had been detailed and then promoted to a

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GS-14 position, Mr. H. D. Cross, and Mr. G. C. Jackson. However, according to the administrative report, the Southeast Region has determined that these persons attained their GS-13 grade level by performing more complex jobs than the periodic audits assigned to Mr. Creel. Mr. Hooker had worked on a Service-wide audit from September through December 1971, and he had served as an auditor-in-charge at the Naval Supply Center, Charleston, from January 1 through April 10, 1972. He then served as Acting Assistant Director in Charleston until his promotion to GS-14 on September 16, 1973. Mr. H. D. Cross was first assigned as an auditor-in-charge on a regional audit recorded April 22, 1974. He was later an auditor-in-charge from June 10 through September 20, 1974, at Camp Lejeune. Mr. Cross was not promoted to a GS-13 until July 7, 1974, and from September 23, 1974, through 1977 he was an auditor-in-charge at a Navy shipyard which was a continuous site audit. Further, Mr. G. C. Jackson did not work on mobile audits between September 1971 and February 1974. Rather he was an auditor-in-charge of a Navy shipyard. He also worked on two complex regional audits and one special audit regarding theft of funds.

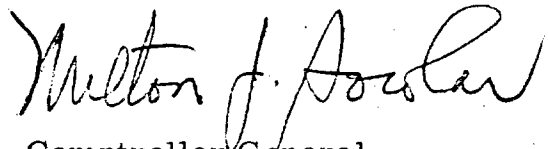
The administrative report of July 18, 1979, the Naval Audit Service Headquarter's letter to Mr. Creel of June 23, 1977, and its report to our Claim's Division of December 14, 1977, concludes that Mr. Creel performed at the GS-12 level as an auditor-in-charge of audits having average complexity in accordance with his job description. In any event, the evidence Mr. Creel submitted is insufficient to prove that he was detailed to perform all of the essential duties of a GS-13 supervisory auditor when weighed against the opposing facts presented by the agency. Mr. Creel 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 Richard M. Bartal, B-193618, May 9, 1979.

We are mindful that in common with other mobile audit locations in the Southeast Region, Charleston was ordinarily assigned at least one supervisory GS-13 auditor and that in the absence of an incumbent formally occupying this position, Mr. Creel's supervisors, particularly Mr. Hooker, made positive statements that Mr. Creel performed the duties of a GS-13. On the other hand we have been offered no direct evidence that during the claim

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period Mr. Creel's duties and responsibilities were classified and established as a GS-13 position.

Accordingly, our Claims Division's disallowance is sustained.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For The Comptroller General
of the United States