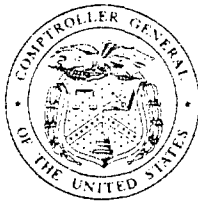


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DECISION



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

FILE: B-194022

DATE: February 12, 1980

MATTER OF: William F. Baker - Detail in excess of 120 days

[Review of Disallowance of claim for retroactive
Temporary Promotion]

DIGEST: Although GS-4 employee was detailed to other positions for more than 120 days, he is not entitled to retroactive temporary promotion and backpay since he was not detailed to higher-grade position. Referral of claim to agency by General Accounting Office for settlement means it is to be adjudicated on merits; payment is not directed. Also, amount shown as due employee on agency form referring Claim to General Accounting Office for direct settlement merely indicates amount agency believes would be payable if claim is allowed.

This decision is in response to a request by Mr. William F. Baker, a former employee of the Department of the Air Force, for a review of the disallowance of his claim for a retroactive temporary promotion and backpay by our Claims Division. The claim was disallowed because Mr. Baker, a GS-4 employee, was not detailed to perform duties classified at a grade level higher than his official grade. The appeal was made by Mr. Baker's union representative Mr. Henry A. Webb, the President of Local No. 1138 of the American Federation of Government Employees.

AGC00035

DLG01689

This appeal is based on apparent inconsistencies among various documents in the record of this case. Mr. Webb finds it inconsistent that the claim should ultimately have been denied when certain documents suggested to him that the claim would be upheld. Mr. Webb refers to a Claims Division letter dated March 29, 1977, which stated that the claim should be settled, and to an Air Force "Disposition of Claim" which shows that Mr. Baker was due \$67.19, an amount less than that claimed by him.

Mr. Baker claims a temporary promotion to GS-5 and backpay for the period August 20, 1971, through December 31, 1974. The administrative report states that he was officially detailed from his GS-4 position to an unestablished position from August 21, 1971, through December 27, 1971. From December 28, 1971, through February 18, 1972, he was detailed to a second GS-4 position.

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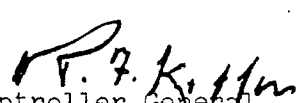
Effective February 17, 1972, the Civil Service Commission approved the extension of Mr. Baker's detail for another 6 months and he was officially detailed to a GS-4 position from February 19, 1972, to May 6, 1972, when he was permanently reassigned to a GS-4 position which he occupied until his retirement on December 31, 1974. The administrative report also states that Mr. Baker was never detailed to perform duties classified higher than GS-4. AGC00013

Our Turner-Caldwell decision 56 Comp. Gen. 427 (1977) provides that an employee who is detailed to a higher-grade position for more than 120 days without prior Civil Service Commission approval is entitled to a retroactive temporary promotion and backpay from the 121st day of the detail until its termination. Since the record does not show that Mr. Baker was detailed to a position higher than GS-4, his claim is not allowable under Turner-Caldwell. Also, for the reasons stated below the apparent inconsistencies among the documents do not form any basis for allowance of his claim.

The March 29, 1977, letter to the Air Force from our Claims Division states that "the claim, and any future claims arising from the same or similar circumstances, should be settled in accordance with the decision of our Office, B-183806, March 23, 1977, ***." This language means that the Air Force should rule on the merits of Mr. Baker's claim by applying the legal principles contained in the cited decision. In this context, the word "settled" means "adjudicated." The letter does not direct the Air Force to pay Mr. Baker's claim.

The "Disposition of Claim" form, dated September 19, 1978, simply contains an amount which the Air Force believed would be payable to Mr. Baker if it were determined that his claim was allowable. It is not a statement that his claim is justified. In this connection we note out that the disposition by the Air Force was its transmittal of the claim to our Office for direct settlement with a recommendation that the claim be disallowed.

In view of the above the disallowance of the claim by our Claims Division is sustained.


Deputy Comptroller General
of the United States