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backpay for the period April 4, 1976, to January 30, 1977. In addition, requests reconsideration of our decision B-194024, October 5, 1979, wherein we held that he was not entitled to payment of a living quarters allowance (LQA) in connection with his assignment to Camp New Amsterdam, the Netherlands.

Claim for Retroactive Temporary Promotion and BackPay

The record shows that effective April 4, 1975, , an employee of the Department of the Air Force, was promoted to the position of Education Services Officer, GS-1710-11, position number 1-S-PER-3, with the 32nd Tactical Fighter Squadron, Education Services Branch, at Camp New Amsterdam, the Netherlands.

Effective November 14, 1973, the position of Education Services Officer, GS-12, position number 1-S-PER-2 had been classified and established in the Education Services Branch. On December 3, 1973, the position to which was appointed, Education Services Officer, GS-1710-11, position number 1-S-PER-3, was established in the Branch. The GS-11 Education Services Officer position description essentially provided that the duties of that position were identical to that of the GS-12 Education Services Officer position, number 1-S-PER-2, except that the GS-11 Education Services Officer would have less independence in his actions and would be under closer supervision. The GS-11 position description also provided that as the soundness of the incumbent's judgments and recommendations were demonstrated he would then independently perform all the duties and responsibilities set forth in the GS-12 position description.

On December 13, 1976, filed a formal grievance which, in part, concerned actions taken by his superiors affecting the classification of his position. As part of the remedy sought, requested a retroactive promotion and accompanying backpay for the period from April 4, 1976, the date he had served 1 year in grade, GS-11.

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The Grievance Examiner's Report, G-77-126, dated September 16, 1977, concluded, in part, that performed the full range of duties outlined in the GS-12 position description. However, the Grievance Examiner determined that was not entitled to the retro-active promotion with backpay as he had not established that he was entitled to a promotion to the grade GS-12 position upon having satisfied the time in grade requirements of the Whitten Amendment on April 4, 1976. In so concluding the Grievance Examiner found that there apparently was not an officially established position of Education Services Officer, GS-1710-12 when was appointed to the GS-11 position in April 1975. This finding was based on the fact that neither nor his immediate supervisor were aware of the GS-12 Education Services Officer position until May 1976. Furthermore, the Grievance Examiner held that although it could be presumed that the GS-12 position had been properly classified in 1973, it could not be concluded that such classification at the GS-12 level was proper in either 1975 or 1976. The Grievance Examiner recommended, on the basis of his findings, that Official Personnel Records be amended to reflect the performance of duties and responsibilities outlined in the GS-12 position description until May 1976, when his immediate supervisor first initiated action to update the position description of the Education Services Officer which as revised was classified and established at the GS-11 grade level on February 3, 1977.

By Letter of Decision dated October 17, 1977, the Commander, Headquarters 7100 Air Base Group (USAFE) accepted the findings and recommendations of the Grievance Examiner and directed that personnel records be amended to reflect his work experience at the GS-12 level from April 1975 to May 1976.

Based on its finding that claim concerned the improper classification of his position, our Claims

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Division (now Claims Group) denied his request for backpay, citing the Supreme Court's holding in United States v. _____, 424 U.S. 392 (1976), that neither the Classification Act nor the Back Pay Act creates a substantive right to backpay for a period of wrongful classification.

now claims a retroactive temporary promotion and backpay for the period April 4, 1976, to January 30, 1977, the last day he was on duty status at Camp New Amsterdam, based on decisions of our Office and implementing Civil Service Commission (CSC) guidance, that employees who are detailed to higher grade positions for more than 120 days without CSC approval are entitled to a retroactive temporary promotion with backpay for the period beginning with the 121st day of the detail until the detail is terminated. _____, 55 Comp. Gen. 785 (1976); Reconsideration of _____, 56 Comp. Gen. 427 (1977) and CSC Bulletin No. 300-40, May 25, 1977.

The beginning date of _____ claim, April 4, 1976, is consistent with our holding that in order to be entitled to backpay incident to an improper extended detail it is necessary that the employee has satisfied the requirements for a retroactive temporary promotion including the applicable time in grade restrictions. Reconsideration of _____, supra.

In addition, entitlement to a retroactive temporary promotion requires that the assigned duties and responsibilities of the detail be those of a position classified and established at a higher-grade. See CSC Bulletin No. 300-40, May 25, 1977, _____, B-196633, January 4, 1980, and _____ B-196824, May 12, 1980.

With regard to what constitutes acceptable proof of a detail, paragraph 8F of CSC Bulletin No. 300-40, states that acceptable documentation includes official personnel documents

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or official memoranda, a decision under established grievance procedures, or a written statement from a supervisor or other management officials familiar with the employee's work certifying that the employee performed the duties of the particular established position for the period claimed.

As noted above, the Grievance Examiner found that from April 4, 1975, performed the full range of duties outlined in the GS-12 position description. As affirmed by the Letter of Decision, this finding would be sufficient evidence under paragraph 8F of CSC Bulletin No. 300-40, to establish his detail to a higher grade position provided that the duties performed were those of a classified and established position.

While the Grievance Examiner determined that the GS-12 Education Services Officer position was not an established position during the period of claim, upon review, we are unable to find that the record supports such a finding. There is nothing in the record before us to show that the agency acted to effectively abolish or cancel the GS-12 Education Services Officer position during the period of claim. The Grievance Examiner's finding that apparently neither nor his immediate supervisor were aware of the existence of the GS-12 position description until May 1976 does not support a conclusion that the higher grade position, classified and established on November 14, 1973, had been canceled or abolished during the period for which a retroactive temporary promotion with backpay is claimed.

Furthermore, neither the Grievance Examiner's findings that it could not be concluded that classification of the higher grade position was proper in 1975 or 1976 nor the fact that an updated Education Services Officer position description was classified and established at the GS-11 level in February 1977, would defeat entitlement to a retroactive temporary promotion with backpay, as classification actions are not retroactively effective except in circumstances not applicable here. See _____, B-190420, March 7, 1978.

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Accordingly, the matter is returned to the agency for finding as to whether the GS-12 Education Services Officer position, number 1-S-PER-2 was officially cancelled or abolished during any portion of the period for which backpay is claimed. _____ is entitled to a retroactive temporary promotion for that part of the period from April 4, 1976, to January 30, 1977, during which the GS-12 position remained established.

Claim for Living Quarters Allowance

In his letter of October 19, 1979, _____ also requests reconsideration of our decision _____, B-194024, October 5, 1979, in which we held that he was not entitled to a LQA incident to his assignment beginning April 4, 1975, to Camp New Amsterdam. His transfer from Berlin to Camp New Amsterdam resulted from his application for the position and selection from a merit promotion certificate.

The payment of LQA to employees of the Government in foreign areas is authorized by 5 U.S.C. 5923 (1976). The criteria for determining whether an employee recruited outside the United States is entitled to such an allowance are contained in the Department of State Standardized Regulations (DSSR) (Government Civilians, Foreign Areas), which provides in pertinent part as follows:

"031.12 Employees Recruited Outside the United States

"Quarters allowances prescribed in Chapter 100 may be granted to employees recruited outside the United States, provided that

- "a. The employee's actual place of residence in the place to which the quarters allowance applies at the time of receipt thereof shall be fairly attributable to his/her employment by the United States Government; and
- "b. prior to appointment, the employee was recruited in the United States, the

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Commonwealth of Puerto Rico, the Canal Zone, or a possession of the United States, by

- "(1) the United States Government, including the Armed Forces;
 - "(2) a United States firm, organization, or interest;
 - "(3) an international organization in which the United States Government participates; or
 - "(4) a foreign government; and had been in substantially continuous employment by such employer under conditions which provided for his/her return transportation to the United States, the Commonwealth of Puerto Rico, the Canal Zone, or a possession of the United States; or
- "c. as a condition of employment by a Government agency, the employee was required by that agency to move to another area, in cases specifically authorized by the head of agency."

In our decision of March 4, 1978, we affirmed the agency's determination that, as a local hire, was not entitled to payment of LQA pursuant to section 0.31.12b of the DSSR. He does not now dispute that determination.

However, he now requests that we reconsider our determination that he was also not entitled to LQA pursuant to section 031.12c. That section has been further implemented

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by Department of Defense Instruction (DODI) No. 1418.1 ✓
dated September 16, 1974, which provides in section 111 Bld
as follows:

"* * * This provision will be applied only when an employee is relocated (Permanent Change of Station) to another area by a management-generated action. In all other situations, this provision will not be applied unless it is established that management has no other alternative but to request an employee not now eligible for the living quarters allowance to relocate to another area."

See also paragraph 2-4c of the Air Force Supplement to Basic FPM Chapter 592.

requests reconsideration of the matter of his entitlement to LQA on the basis that "local management" had determined that he was entitled to payment of LQA. The record shows that the Base Commander, 32d Tactical Fighter Squadron, (USAFE), Camp New Amsterdam, as well as the Chief, Management, Headquarters 601st Combat Support Group (USAFE) believed that was properly entitled to LQA under section 031.12c of the DSSR. Specifically, they felt that there had been no alternative to local management's request for reassignment from Berlin and that his transfer to Camp New Amsterdam was a management generated action.

Paragraph 1-5a of the Air Force Supplement to Basic FPM (Increment 22) dated July 1, 1973, provides in pertinent part that determination as to eligibility to LQA pursuant to section 031.12c of the DSSR is to be made by Headquarters USAF (DPCMC).

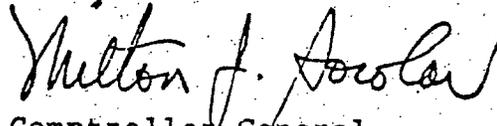
As stated in our decision^x of October 5, 1979, on May 16, 1975, request for authorization of an LQA was submitted to headquarters level together with a recommendation of approval. On July 25, 1975, Headquarters, U.S. Air Force (DPCMC) responded by determining that DODI 1418.1, X

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section 111 Bld does not authorize the granting of LQA to an employee who has not previously been entitled to such allowance, and who applies for and fills a vacancy at another overseas location. The Headquarters, USAF, advised that such a situation would not constitute a "management-generated action" which it defined as including a reassignment due to abolishment of an employee's position; a transfer of function; or a management requested reassignment. Headquarters, USAF, concluded that "* * * where such actions are not requested by the employee", an LQA could be authorized. Furthermore, by letter dated December 12, 1975, Headquarters, USAF, advised that his transfer involved neither a "management generated action" nor a situation where management did not have a choice in how the vacant position would be filled; so that he was not entitled to LQA. On August 10, 1976, the Staff Director, Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs) confirmed the Air Force's determination that the circumstances of Mr. Reynolds' transfer did not constitute a "management-generated action" so as to entitle him to LQA.

Although, as contended by _____, "local management" officials may have believed that he was entitled to payment of LQA local officials are not authorized to make the necessary determination of entitlement to an LQA under DSSR 031.12c. As set forth at paragraphs 1-5a(3) and 2-4c of the Air Force Supplement to the Basic FPM, the role of subordinate officials, including the Civilian Personnel Officer, is limited to participation in the preparation and submission of a "fully documented case through command channels to Headquarters USAF (DPCMC) for prior decision when the circumstances appear to justify LQA eligibility under * * * Section 031.12c." In _____ case the proper authority, Headquarters, USAF, as well as the Department of Defense, have determined that the circumstances of his transfer to Camp New Amsterdam did not provide a basis for such entitlement. Accordingly, upon review, we

find no basis that would warrant changing the conclusion reached in our decision of October 5, 1979, which disallowed claim for LQA.

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

For the Comptroller General
of the United States