

DECISION



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

12/20 T. K. Karpenter

FILE: B-194736

DATE: November 27, 1979

MATTER OF: Vester K. Du Pree - Retroactive Temporary Promotion

Request for

DIGEST: Although Air Force supervisors stated lower grade employee performed higher-level duties and he was given credit for performing 77 months of work at GS-14 level, employee is not entitled to retroactive temporary promotion because he was not detailed to "established position." Para. 3a, Air Force Regulation 40-296, December 10, 1968, and subsequent regulations required manpower authorization, as well as position description and classification action, and such action was not taken.

This decision responds to the request of Vester K. Du Pree, an employee of the Department of the Air Force, Wright-Patterson Air Force Base, for reconsideration of his claim for a retroactive temporary promotion and backpay based upon a detail to a higher-level position, evidently during the period December 1969 through June 1976. That portion of the claim which was not barred by 31 U.S.C. § 71a (1976) was denied by our Claims Division's settlement of January 25, 1979, on the ground that Mr. Du Pree had not been detailed to a higher grade established position. Mr. Du Pree, a GS-13 employee, alleges that he was detailed to an established GS-14 position since his agency gave him credit for 77 months of experience during the period of his claim at that grade level.

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Our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 *id.* 427 (1977), hold that an employee who is detailed to a higher grade position for more than 120 days without prior approval of the Civil Service Commission is entitled to a retroactive temporary promotion and backpay beginning on the 121st day of the detail if he meets the criteria for promotion. Subsequent decisions, such as Marie Grant, 55 Comp. Gen. 785 (1976), and Civil Service Commission Bulletin 300-40, May 25, 1977, provide guidelines for implementation of our Turner-Caldwell decisions:

Entitlement to a retroactive temporary promotion requires that the assigned duties and responsibilities of the detail be those of an "established position." Civil Service Commission Bulletin No. 300-40 and Donald P. Konrady, B-193555, January 26, 1979.

Air Force employees pers.
Backpay claims
reconsideration
Retroactive promotion
Temporary promotion
Job classification

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The record does not indicate that Mr. Du Pree's detail was to an "established position." In order to establish a position the Air Force regulations state that a manpower authorization must exist and the duties and responsibilities of the position must be described and assigned a specific classification. See para. 3a, Air Force Regulation 40-296, December 10, 1968, and subsequent reissues of that regulation. The record shows that Standard Forms 172, Amendment to Personnel Qualifications Statements were signed in 1971, 1975, and 1977 by Mr. Du Pree's supervisors showing that he performed the duties of positions rated at GS-334-14. On the basis of the latest Standard Form 172 he was given credit for 77 months of experience at the GS-14 grade level. However, the record fails to indicate that final classification action was taken by an authorized official to establish a GS-14 position based on the Standard Forms 172 in Mr. Du Pree's work organization. Further, there is no evidence in the file of the required manpower authorization. Although Mr. Du Pree's supervisor stated on Standard Form 172 that he performed the higher-level duties, the Acting Chief, Position Management Section, certified on July 25, 1977:

"* * *that the duties as defined on SF-172, dated 2 February 1971, were not the duties of an established classified position for the purposes of awarding backpay."

Mr. Du Pree has not provided a position description, of any position in his organization which reflects the GS-14 duties performed by him. Therefore, we cannot find that he was detailed to an established GS-14 position. At most the record indicates that his position was misclassified. In this connection the United States Supreme Court in United States v. Testan, 424 U.S. 392 (1975), held that neither the Classification Act nor the Back Pay Act created a substantive right in employees for a period of claimed wrongful classification. Therefore, Mr. Du Pree has no entitlement to a retroactive promotion and backpay.

Accordingly, our Claims Division's disallowance is sustained.

Milton J. Forca

For The Comptroller General
of the United States