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DECISION

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

FILE: B-194747

DATE: March 12, 1980

MATTER OF: Jewel Maxwell, Jr. ^(REQUEST FOR) Retroactive Temporary Promotion]

DIGEST: Even if true, employee's claim that he supervised higher grade personnel does not entitle him to a retroactive temporary promotion and backpay in the absence of evidence establishing that he was detailed to a position established and classified at a higher grade level.

This action involves an appeal of the March 15, 1979, decision of our Claims Division which denied the request of Mr. Jewel Maxwell, Jr. for a retroactive temporary promotion and backpay.

Mr. Maxwell held the positions of Engine Disassembler Leader, WL-5, and Engine Disassembler Foreman, WS-5, during the periods for which he claims backpay. His duties included administrative coordination and supervision. Mr. Maxwell states that he supervised WG-8 and WG-10 personnel, and that this supervision entitles him to backpay at the WL-7 and WS-9 levels. There is some dispute in the record as to whether Mr. Maxwell actually did supervise these employees. However, it is not necessary to our decision to resolve this dispute.

This Office has held that an employee detailed to a higher grade position for more than 120 days, without prior Civil Service Commission approval, is entitled to a retroactive temporary promotion if certain conditions are met. Matter of Turner-Caldwell, 55 Comp. Gen. 539 (1975) affirmed 56 id. 427 (1977). This remedy is only available, however, when the employee is actually "detailed" to a higher level position. A detail does not occur merely through an employee's performance of certain duties, but requires assignment of the employee to a particular position.

Mr. Maxwell does not claim that he was detailed to a higher level position at either WL-7 or WS-9 and, in fact the record fails to indicate that positions classified at those grade levels had been established for more than 120 days during any of the three periods covered by his claim. Instead, he bases his claim on the assumption that an employee who performs duties that would ordinarily be performed by an employee classified at a higher grade is entitled to

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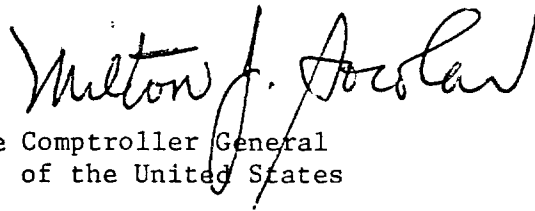
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backpay at the higher level. However, this assumption is incorrect.

The employee must show that he performed the duties of an established and classified higher-level position. As to the first period of his claim, there is no evidence that there was an established WL-7 position. As to the latter periods of his claim, the agency's report shows that a WS-9 position, based on supervision of WG-10 employees, was not classified and established until a date within 120 days of the ending date of the claim. The new evidence Mr. Maxwell has submitted tends to show that he supervised WG-10 employees, but it does not show that he was detailed to a higher-grade position. Thus, he has failed to meet his burden of proof to establish his right to payment. 4 C.F.R. § 31.7 (1979); Oscar G. Adams, B-196633, January 4, 1980.

For the reasons stated above, we sustain our Claims Division's determination denying Mr. Maxwell's claim for a retroactive temporary promotion and backpay.



For the Comptroller General
of the United States