

DECISION



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

FILE: B-195598

DATE: December 20, 1979

MATTER OF: Lawrence D. Sutton - Retroactive Temporary Promotion

DIGEST: Claimant is not entitled to retroactive temporary promotion. Civilian Personnel Officer, who supervised claimant, submitted written statement that he, not claimant, supervised Management Employee Relations Branch of personnel office. Although claimant submitted written statements of other branch chiefs indicating that they regarded claimant as branch chief, claimant has not sustained his burden to prove that he was in fact detailed to and performed the full range of the duties of the higher grade position.

Mr. Lawrence D. Sutton appeals the disallowance of his claim for a retroactive temporary promotion with backpay because of a detail to a higher level position. Our Claims Division disallowed the claim by Settlement Certificate No. Z-2705374, March 15, 1979.

The issue is whether there is proof showing that Mr. Sutton, while an employee of the Army, was actually detailed to and performed the essential duties of an established position at a higher-grade level than he was paid.

Mr. Sutton says that he was detailed to the duties of Chief, Management Employee Relations Branch, Civilian Personnel Office, Fort Lewis, Washington, for the period from July 1, 1974, through August 16, 1975, except for the period from March 16, to June 22, 1975, when he states he served under a temporary promotion. This higher-grade position was classified as Supervisory Labor Management Relations Specialist, Occupational Code GS-0230, at grade level GS-13.

Based on a statement written by Mr. Sutton's former supervisor, Mr. Glen W. Berry, who had been the Civilian Personnel Officer at Fort Lewis during the portion of the claim period ending December 31, 1974, the Army as well as our Claims Division denied Mr. Sutton's claim for a retroactive temporary promotion. According to his statement, Mr. Oscar P. Sciaqua, who had been the incumbent of the higher-grade level position in question, retired on or about

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Retroactive promotion
Temporary promotion
Back pay claim
Job classification
GS grade classification

August 18, 1974, at which time Mr. Sutton held the senior GS-12 position as Labor Management and Employee Relations Specialist. Because he decided it was in the best interest of the office not to detail anyone to the vacant position, Mr. Berry states that he personally supervised the Management Employee Relations Branch and that he so informed the other branch chiefs. He states that as the senior Labor Management and Employee Relations Specialist "Mr. Sutton undoubtedly had to accept certain duties normally performed by a full time supervisor," (emphasis added). However, he stresses that Mr. Sutton was not expected to perform the duties of the Supervisory Labor Management Relations Specialist GS-230-13 Job # DA 906S, which was the position left vacant when Mr. Sciaqua retired.

Mr. Sutton now presents written statements of the three branch chiefs serving under Mr. Berry during the portion of the claim period ending December 31, 1974. Their statements, dated in May 1979, relate that they were not advised that Mr. Berry would supervise the Management Employee Relations Branch, but that they were aware Mr. Sutton had supervised it at previous times, and they continued to conduct business with Mr. Sutton under the impression he was Branch Chief.

One of the three branch chiefs, Floyd W. Stevick, became Acting Civilian Personnel Officer and supervised Mr. Sutton after Mr. Berry retired on December 31, 1974. He formally detailed Mr. Sutton to serve as Chief, Management Employees Relations Branch, effective January 2, 1975, not to exceed 60 days. Mr. Sutton was temporarily promoted to that position on March 16, 1975, for a period not to exceed May 10, 1975, however the temporary promotion was extended effective May 11, 1975, until August 2, 1975, when it terminated. Mr. Sutton received a regular promotion to the Branch Chief position effective August 17, 1975.

In accordance with our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 id. 427 (1977), qualified employees are entitled to a retroactive temporary promotion with backpay for a detail to a higher-level position in excess of 120 days (240 days if an extension was approved by the Commission). Under those decisions an employee is considered to have been detailed only insofar as he was assigned all the essential duties of the higher-level position. Matter of Patrick J. Fleming, B-191413, September 19, 1978. It suffices if

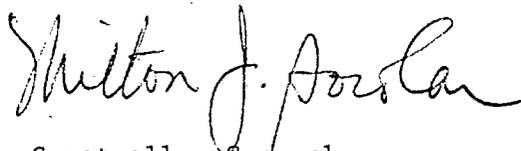
the record clearly demonstrates official recognition of assignment to and performance of the full range of duties of the higher-grade position. It is the claimant's burden, however, to prove all elements of his claim. Walter D. Corder, Jr., B-195023, August 21, 1979.

In the present case, the statement of the former Civilian Personnel Officer to the effect that he personally supervised the Management Employee Relations Branch, between August 18, and December 31, 1974, causes serious doubt as to whether Mr. Sutton was assigned and performed all essential supervisory duties of the Branch Chief position for this period. The statements of the three branch chiefs tend to controvert Mr. Berry's statement that he advised them that he was to personally supervise the Management Employee Relations Branch and indicates that at least those three individuals dealt with Mr. Sutton under the impression that he was the Branch Chief. Although the record reflects that Mr. Sutton performed many of the Branch Chief's duties, it does not controvert Mr. Berry's statement as the then responsible Civilian Personnel Officer indicating that Mr. Sutton was not assigned and did not perform the full range of responsibilities of the Branch Chief position. As to the period of his claim from August 18, 1974, to December 31, 1974, we conclude that Mr. Sutton 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 William L. DeGraw, B-194369, August 24, 1979.

For the portion of the claim period July 1, to August 18, 1974, the record indicates that the incumbent Branch Chief, Mr. Sciaqua, performed the duties of that position, having been on sick leave pending disability retirement for a total of only 11 hours in 1 to 4 hour increments between July 1, and August 19, 1974. Additionally, there is no basis to grant Mr. Sutton a retroactive temporary promotion between the termination of his temporary promotion on August 2, 1975, and the date of his regular promotion on August 17, 1975, even though he may have continued to perform the same higher-grade duties in the interim. The period of his temporary promotion from March 16, 1975, until August 2, 1975, is not included for the purpose of determining whether he was detailed for an excess of 120 days. 58 Comp. Gen. 401 (1979). Thus, the period of his detail from August 2, to August 16, 1975, when combined with the period from January 2, 1975, through March 16, 1975, does not exceed 120 days.

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Accordingly, Mr. Sutton is not entitled to a retroactive temporary promotion, and our Claims Division's disallowance is sustained.

A handwritten signature in cursive script that reads "Milton J. Jordan". The signature is written in dark ink and is positioned above the typed name.

For The Comptroller General
of the United States