

PLM-1

12245

DECISION



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

FILE: B-195656

DATE: December 10, 1979

MATTER OF: Roger F. Dierking [Claim for Retroactive
Promotion and Backpay]

DIGEST: Employee classified as GS-11 claims retroactive promotion to GS-12 and backpay on ground that agency should have effected proposed reclassification actions showing higher grade. Although requests were made in 1971 and 1975 to reclassify employee's position as GS-12, employee has no entitlement to backpay since there is no evidence that the higher grade was ever established.

Mr. Roger F. Dierking has appealed from a denial by our Claims Division of his claim for retroactive promotion and backpay.

Mr. Dierking's claim was received in this Office on March 1, 1979; therefore, the period prior to March 1, 1973, is precluded from our consideration as it is time barred. 31 U.S.C. § 71a (1976).

The record shows that Mr. Dierking was employed by the Bureau of Land Management, State Office, Portland Oregon. He was occupying a position classified as a Supervisory Land Law Examiner, GS-11. Mr. Dierking says that a job description was prepared by his agency in 1971 and 1975, upgrading his position to a GS-12. However, neither of the proposed reclassification actions ever went into effect. In 1978, a position classifier determined that his duties were properly classified at the GS-11 level. This last action has been appealed by Mr. Dierking and is pending in the Office of Personnel Management. Mr. Dierking states that "[t]he agency was responsible for completing appointment at the GS-12 grade when duties were so classified and assigned." He also stated that "[n]o authority existed for the agency to continue pay at the lower GS-11 grade under an outdated position description and classification action." He therefore claims he has suffered an unjustified or unwarranted personnel action and is entitled to backpay under the provisions of the Back Pay Act. 5 U.S.C. § 5596 (1976).

D3471

D925

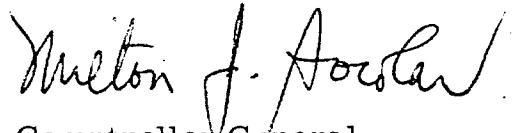
~~008017~~ 111048

B-195656

The Classification Act of 1949, now codified in 5 U.S.C. § 5101 et seq., governs classification of Federal positions in the General Schedule. Under the statute and implementing regulations in 5 C.F.R. § 511.101 et seq., the employee's agency and the Civil Service Commission are primarily responsible for the classification of duties of the employee's position. With one exception not pertinent here classification actions may not be made retroactive under civil service regulations. Also, the Supreme Court held in United States v. Testan, 424 U.S. 392 (1976), that neither the Classification Act nor the Back Pay Act, 5 U.S.C. § 5596 (1976) creates a substantive right to backpay for a period of wrongful position classification. George A. Jackson, B-188617, September 20, 1977.

In the instant case requests initiated in 1971 and 1975 to reclassify Mr. Dierking's position at GS-12 were approved by Mr. Dierking's supervisor. Also, the 1975 request was approved by the Acting Associate State Director, Bureau of Land Management, and a personnel management specialist. However, there is no evidence of approval of the GS-12 position by anyone in the agency authorized to take final classification action. Since there is no evidence of the establishment of a GS-12 position, Mr. Dierking has no entitlement to a retroactive promotion and backpay.

Accordingly, the action taken by our Claims Division disallowing Mr. Dierking's claim, is sustained.



For the Comptroller General
of the United States