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**DECISION**

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

FILE: B-196639

DATE: May 15, 1980

MATTER OF: Ralph Levine <sup>REQUEST FOR</sup> Retroactive Temporary Promotion ]

DIGEST: Army employee appeals from action of Claims Division which denied his claim for 4 retroactive temporary promotions and backpay between July 1974 and August 1977. These 4 periods intervene between periods he was not temporarily promoted to higher-grade GS-12 position. Indications that temporary promotions were to provide "continuity of operations" and to correct inequities do not refute Army report stating employee's duties reverted to that of his GS-11 position at end of each temporary promotion or constitute proof of detail under Turner-Caldwell decisions.

By a letter dated October 5, 1979, Mr. Ralph Levine appealed Certificate of Settlement No. Z-2815506, issued September 18, 1979, which denied his claims for 4 retroactive temporary promotions and backpay based on our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 Comp. Gen. 427 (1977). Mr. Levine is an employee of the Department of the Army at the U.S. Army Armament Research and Development Command, Dover, New Jersey.

Mr. Levine is seeking backpay for promotion from grade GS-11 to GS-12 for 4 periods between November 10, 1974, and August 20, 1977. The record shows that he was temporarily promoted to grade GS-12 for the following periods: March 2 to June 29, 1975; May 30 to August 27, 1976; and October 31, 1976, to May 18, 1977. Mr. Levine alleges that he was detailed to a GS-12 position at all times from November 10, 1974 until he was permanently promoted to GS-12 on August 21, 1977. His claim was denied by our Claims Division (now Claims Group, FGMSD) on September 18, 1979, on the basis of an administrative report from the Department of the Army which indicated that Mr. Levine performed the duties of his appointed GS-11 position except during his temporary promotions and because Mr. Levine failed to provide sufficient

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evidence to show that he was in fact detailed to a higher grade position other than during the times of his temporary promotions.

In Matter of Fred E. Tallent, B-195685, December 5, 1979, the criteria or guidelines for documenting a detail, found at paragraph 8.F of Federal Personnel Manual Bulletin No. 300-40, May 25, 1977, were stated as follows:

"Acceptable documentation to substantiate a detail. GAO regulations provide that claims are to be 'settled on the basis of facts as established by the Government agency concerned and by evidence submitted by the claimant' (4 C.F.R. 31.7).

"Commission instructions require agencies to record details in excess of 30 calendar days on SF 52 or other appropriate form and to file it on the permanent side of the employee's Official Personnel Folder (FPM Supplement 296-31, Book II, Subchapter S3-13). While in the case GAO decided, this type of proof was not in the Official Personnel Folder, evidence in the form of agency memoranda reflecting the assignment was considered acceptable documentation. In addition, the personnel officer or that official's superior may certify in writing that reliable sources verify that the duties claimed were performed.

"In the absence of the above documentation the employee may provide other acceptable proof including:

"copies of Standard Forms 50 or 52, or official memoranda of assignment from the employee's possession,

"a written statement from the person who supervised the employee during the period in question, or other management official familiar with the work, certifying that to his or her personal knowledge the employee performed the duties of the particular established, classified position for the period claimed, or

"a decision under established grievance procedures."

In support of his contention that he performed GS-12 duties other than during the periods of his temporary promotions, Mr. Levine refers to the following statement from a memorandum dated May 14, 1976:

"\* \* \* Action is underway to correct the inequity you cite, i.e., your assignment to the duties of a Reliability Engineer, GS-801-12. A noncompetitive temporary promotion action is in process to compensate you at the GS-12 level for a period of no more than 120 days. \* \* \*"


The temporary promotion to which that statement refers was processed effective May 30, 1976, and extended until August 27, 1976. We have been advised by personnel officials at the Picatinny Arsenal that the statement quoted above was intended only to refer to the employee's complaint of inequity in not being promoted to GS-12 and not as an indication that he had been or was then detailed to a GS-12 position. We are unable to find that this memorandum meets the criteria set forth in FPM Bulletin No. 300-40, quoted above, for proof of a detail, or that it controverts statements by the Chief of the Nuclear Systems Division that upon expiration of each temporary promotion, Mr. Levine's work was confined to that of the GS-11 position to which he was assigned. Assuming, arguendo, that the memorandum did constitute proof that Mr. Levine had been detailed to the

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duties of a GS-12 position, it would fail as sufficient evidence for purposes of backpay in that there is no reference to the time at which the alleged detail began or terminated.

We have considered the additional argument posed by Mr. Levine that the documentation furnished him at the time of each temporary promotion to GS-12 provides proof that he was detailed for periods not covered by those promotions. Mr. Levine points out that each notification of temporary promotion states that the action is justified as "necessary to provide continuity of operations within the Reliability and Maintainability Branch of the Nuclear Systems Reliability and Safety Division." He suggests that "continuity of operations" could not have been maintained unless he was detailed to the same GS-12 positions for periods not covered by the three temporary promotions. We are unable to find that the justification given for Mr. Levine's temporary promotions establishes that he was detailed to the same position for additional periods. We note that in addition to the justification stated, each notification of temporary promotion indicates the date on which the temporary promotion would terminate and states that he would be returned to his regular GS-11 position when the temporary promotions ended. Thus, the documentation relied on by Mr. Levine is generally consistent with the administrative report which indicates that Mr. Levine's work reverted to that of the GS-11 position to which he was assigned upon the termination of each temporary promotion.

Accordingly, the action of our Claims Division in denying Mr. Levine's claim for a retroactive temporary promotion and backpay is sustained.



Acting Comptroller General  
of the United States