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DECISION



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

FILE: B-196640

DATE: April 1, 1980

MATTER OF: Lewis E. Wilkinson--*[Claim for]* Retroactive Temporary Promotion and Backpay *]*

DIGEST: A GS-11 employee is not entitled to a retroactive temporary promotion and backpay when he fails to prove that the position he was detailed to was classified at a grade higher than GS-11. Evidence that other employees in same job series were paid at GS-12 level does not show that agency erred in classifying claimant's position at GS-11.

Lewis E. Wilkinson appeals our Claims Division settlement dated February 12, 1979, Z-2725249, denying his backpay claim based on Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed at 56 id. 427 (1977). Those decisions hold that if an employee is detailed to a position classified at a higher grade for a period in excess of 120 days without prior Civil Service Commission (CSC) approval, he or she is entitled to a retroactive temporary promotion and backpay for such period provided all qualifications and other requirements for such a promotion are met. See paragraph 8C, CSC Bulletin 300-40, May 22, 1977.

Mr. Wilkinson was employed by the Internal Revenue Service as a GS-11 Program Manager for the Taxpayer Compliance Measurement Program (TCMP) in Birmingham, Alabama. Mr. Wilkinson alleges that he was detailed to this position beginning on May 18, 1972, and ending on August 3, 1975. Mr. Wilkinson alleges that other TCMP Managers were GS-12s and that he performed the same duties. On February 5, 1975, Mr. Wilkinson requested a Job Classification Desk Check but this request was never granted. However, after meeting with union representatives and management, Mr. Wilkinson was given a High Quality Award and he was promoted to a GS-12 on August 3, 1975.

Mr. Wilkinson believes that our Turner-Caldwell decisions apply to his situation and that he should be granted a retroactive temporary promotion and backpay. Our Claims Division denied Mr. Wilkinson's claim on the ground that his claim was based

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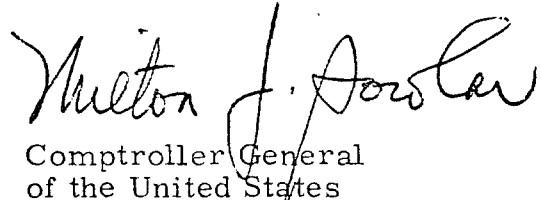
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on a wrongful classification and that neither the Classification Act nor the Back Pay Act create a substantive right to back pay based on a wrongful classification. For the following reasons, Mr. Wilkinson's appeal is denied.

As is the case with any claim against the United States, the burden is on the claimant to establish the liability of the United States and the claimant's right to payment. See 4 C.F.R. § 31.7 (1978). In this case, Mr. Wilkinson has failed to prove that he was detailed to a position classified as a higher grade. Mr. Wilkinson has submitted no evidence which proves that a TCMP Program Manager position was required to be classified at a GS-12 grade level. In fact, evidence has been submitted that there was a Columbia, South Carolina, Program Manager who was a GS-11. The facts indicate that most program managers were GS-12s but, the agency did not officially classify the position at that level. The fact that most employees in that position were GS-12s does not prove that the position was classified at that level. Therefore, Mr. Wilkinson has failed to prove that he was detailed to a position classified at a higher level and relief under our Turner-Caldwell doctrine is not appropriate.

Furthermore, classification matters are under the jurisdiction of the agency and the Office of Personnel Management (formerly Civil Service Commission). In this regard, the United States Supreme Court has held that neither the Classification Act nor the Back Pay Act creates a substantive right to back pay based on a wrongful classification. See United States v. Testan, 424 U.S. 392 (1976).

Accordingly, we sustain the Claims Division's action in denying Mr. Wilkinson's claim.



For The Comptroller General
of the United States