

13971 PLM-

DECISION



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

FILE: B-197474

DATE June 9, 1980

MATTER OF: Robert D. Warren - *[Claim For]* Retroactive Promotion
and Backpay

DIGEST:

- (1) Civilian employee of Department of the Army claims retroactive promotion and backpay for period June 21, 1977, to October 13, 1978, during which he was assigned as Acting Director, Directorate of Engineering and Housing. Since position was not formally established or classified as civilian General Schedule position until June 15, 1978, when claimant was temporarily promoted to newly classified position, he is not entitled to relief afforded under Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), affirmed 56 Comp. 427 (1977).
- (2) Matters relating to allegations of improper position classification, including alleged unreasonable delay in processing of position classification, are for employing agency and Office of Personnel Management. GAO has no authority to settle claims on any basis other than the agency or OPM classification, nor does GAO have authority to award backpay to an employee for period of erroneous classification of his position. See cases and regulations cited.

This decision concerning Mr. Robert D. Warren, re-considers Settlement Certificate Z-2815613 dated August 15, 1979, issued by our Claims Division, disallowing his claim for a retroactive temporary promotion and backpay for the period from June 21, 1977, through October 13, 1978, incident to his employment with the Department of the Army.

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The record shows that Mr. Warren was assigned duties as the Acting Director, Directorate of Engineering and Housing (DEH) United States Army Military Community Activity, Vicenza, Italy, effective February 14, 1977. The position was authorized and classified for military personnel as an 05 engineer officer position, although local facilities were granted conditional approval to convert the military position to a civilian one. On July 27, 1977, the deputy commander of Mr. Warren's facility signed a position description, No. 7594, with a proposed title, series and grade for the position as a "Supervisory General Engineer, GS-801-14," certifying that the duties and responsibilities were correct and that the position was necessary. However, the position description was not signed by a classification specialist attesting to the correctness of the classification at that time. Additional indication that the position was not officially classified to a civilian grade is found through examination of Department of the Army Form 2496, dated March 30, 1978, which requested approval for the DEH organizational concept prior to review for grade approval. By letter dated June 15, 1978, approval to establish the civilian DEH position at the GS-14 grade level was granted for a period not to exceed 120 days effective on the date of that letter. Mr. Warren was given a temporary promotion to the DEH position for the period June 15, 1978, to October 13, 1978.

Our Claims Division disallowed Mr. Warren's claim because the position the duties of which he performed, was a military one and not established and classified to a civilian grade or pay level during the period of his detail.

Mr. Warren has questioned the correctness of the Claims Division's adjudication. In substance he contends that he was detailed to a higher-grade position which was effectively and appropriately "classified" when the deputy commander signed position description No. 7594 on July 27, 1977. Mr. Warren also generally contends that, in view of the agency's inordinate delays in the processing of the reclassification of the DEH position from June 21, 1977,

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through June 15, 1978, he was misclassified and improperly denied pay during the period of his claim.

The Classification Act, 5 U.S.C. §§ 5101, et seq., governs classification of Federal positions in the General Schedule. Under the statute and implementing regulations contained in title 5 of the Code of Federal Regulations, Part 511, the employee's agency and the Civil Service Commission (now the Office of Personnel Management (OPM)) are primarily responsible for classification of the duties of the employee's position. As a result, this Office has no authority to settle claims on any basis other than the agency or OPM classification. William A. Campbell, B-183103, June 2, 1975. Further, because the statutory authority to establish appropriate classification standards and to allocate positions subject to the General Schedule is vested in the agency concerned and OPM, we have consistently stated that employees should appeal alleged improper classifications through their agencies or to OPM. 55 Comp. Gen. 1062 (1976); J. E. Skowronski, B-190442, April 13, 1978. And, since OPM determinations on classification appeals are binding on this Office under 5 U.S.C. § 5112(a), we have no authority to modify such actions. Ms. Gwenn Herring, B-183120, February 21, 1975.

The record does not disclose that Mr. Warren successfully appealed either the alleged improper classification or the alleged unreasonable delay in having the position in question reclassified. Thus, we must concur with the finding of our Claims Division that the establishment for classification purposes of the civilian DEH position at the GS-14 grade level was not effective until June 15, 1978. On that date Mr. Warren was temporarily promoted to the newly classified position for the period June 15, 1978, to October 13, 1978. Prior to June 15, 1978, although Mr. Warren clearly performed the duties and responsibilities of the civilian DEH position, the position was not established and classified at the GS-14 grade level.

Under the rationale of our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 Comp. Gen. 427

(1977), we have recognized that in certain circumstances an employee may be entitled to a retroactive promotion if he is officially detailed to an existing, classified, higher-grade position for an extended period. The Civil Service Commission promulgated implementing guidance concerning Turner-Caldwell, supra, in its Bulletin No. 300-40 dated May 25, 1977. Paragraph 4 of that bulletin states: "For purposes of this decision, the position must be an established one, classified under an occupational standard to a grade or pay level." (Emphasis in original.) This statement emphasizes that the crucial aspect in the Turner-Caldwell line of cases is that the position or duties to which an employee is detailed be those of an established and classified position. See Donald P. Konrady, B-193555, January 26, 1979, and decisions cited therein. In the present case, where the civilian DEH position was not established and formally classified during the time of his claim, Mr. Warren is not entitled to a retroactive promotion on the basis of our Turner-Caldwell line of cases.

Furthermore, neither the Back Pay Act, 5 U.S.C. § 5596 (1976), nor the Classification Act, 5 U.S.C. §§ 5101-5115 (1976), authorize a retroactive promotion with backpay for the period of an alleged improper classification. United States v. Testan, 424 U.S. 392 (1976). Also, retroactive promotions may not be awarded solely on the basis of administrative delays in the processing of personnel actions. Clem H. Gifford, B-193834, June 13, 1979.

Accordingly, we sustain our Claims Division determination denying Mr. Warren's claim for retroactive promotion and backpay.



Acting Comptroller General
of the United States