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DECISION



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

FILE: B-198388

Claim For

DATE: February 23, 1981

MATTER OF: Paul Monteleone - Retroactive Temporary Promotion and Backpay - Effective Date of Position Classification

DIGEST:

Employee's claim for retroactive promotion and backpay for overlong detail under Turner-Caldwell line of cases was denied by our Claims Group because record did not support finding that employee was detailed to an established classified higher-grade position. Employee on appeal disputes agency's contention that subject position was not properly established and classified during period of claim. Disallowance is sustained since administrative record supports agency's finding that subject position was not officially established in accordance with prescribed agency and CSC requirements during period of claim.

Mr. Paul Monteleone, through his authorized representative, requests reconsideration of his claim for a retroactive temporary promotion and backpay which was denied by our Claims Group settlement of January 15, 1980. We are sustaining the adjudication of our Claims Group in accordance with the following analysis.

Briefly, Mr. Monteleone has claimed a retroactive promotion and backpay under our Turner-Caldwell line of decisions, 55 Comp. Gen. 539 (1975), and 56 id. 427 (1977), for an overlong detail during which he alleges that he performed the duties of a GS-0801-14, Supervisory Engineer, from May 14, 1972, to March 20, 1977, as a civilian employee of the Department of the Army at the Picatinny Arsenal. The record shows that during this time Mr. Monteleone's official position was General Engineer, GS-0801-13.

The Army denied Mr. Monteleone's claim, finding that the position the duties of which he alleged he performed was not established by appropriate personnel action until August 1975, when classifiers officially

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established the position. Mr. Monteleone's entitlement after that date to the higher compensation has been recognized.

Similarly, our Claims Group disallowed Mr. Monteleone's claim - barring consideration of that part of his claim precluded by operation of 31 U.S.C. 71a (1976) - on the basis that the position to which he was allegedly detailed had not been established and classified to a grade or pay level during the period under consideration as required by Civil Service Commission Bulletin No. 300-40 (May 25, 1977) and our Turner-Caldwell line of decisions. Thus, since an employee cannot be promoted to a position which has not been classified, he may not receive a retroactive temporary promotion and backpay based on his detail to an unclassified position. The fact that an employee performed duties normally assigned to a higher level position does not provide a basis for retroactive temporary promotion where the higher-grade position was not classified at the time.

On appeal Mr. Monteleone has offered a range of documentary evidence and analysis which purports to show that the position in question was in fact classified and established at the GS-14 level during the period of his claim. The obvious result is a dispute of fact between Mr. Monteleone and the Department of the Army as to when the position was officially established pursuant to approval of pay category, title, series and grade obtained in accordance with applicable regulations and standards of the Civil Service Commission and the Department of the Army. See for example Roger F. Dierking, B-195656, December 10, 1979, and Connon R. Odom, B-196824, May 12, 1980, in regard to final classification action.

The determination of the date on which the GS-14 level position in question was effectively established involves a factual determination in regard to a classification issue that was possibly subject to appeal to the Office of Personnel Management. See the Odom case cited above. In the absence of a dispositive finding by the Office of Personnel Management on the

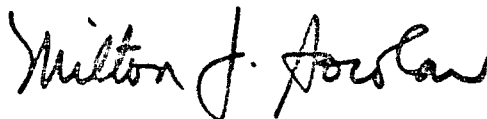
effective date of the classification action, and consistent with our review of the factual basis of Mr. Monteleone's claim as presented in the administrative record, we affirm the statement in our Claims Group's adjudication that:

"We should point out paragraph 2-30 of the Army Regulations, 310-49 (March 2, 1970) clearly indicates that the authorization contained in the TDA for the classification of a particular civilian position does not, by itself, officially establish that position or constitute an official approval of pay category, title, series, or grade. The official establishment of positions contained in the TDA depends on approval obtained in accordance with applicable regulations and standards of the CSC and the Department of the Army."

Nothing in the record before us indicates that such necessary approval was obtained.

Thus, while Mr. Monteleone's appeal here highlights the disagreement that exists regarding the actual effective date of the GS-14 level position in question, we concur in the agency's finding that the position in question was neither filled nor officially established pursuant to the agency's mandatory authentication procedures until August 1975 when appropriate classification action was taken and after which Mr. Monteleone's entitlement to retroactive temporary promotion was recognized.

Accordingly, we sustain the action taken by our Claims group in disallowing Mr. Monteleone's claim.



For the Comptroller General
of the United States