

**DECISION**



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

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**FILE:** B-199115

**DATE:** August 25, 1980

**MATTER OF:** Robert R. Johns - Claim for retroactive temporary promotion and backpay

**DIGEST:** Employee assigned duties of abolished higher-grade position is not entitled to retroactive temporary promotion since he did not perform higher-grade duties of a classified, established position. Furthermore, employee's classification claim is not within jurisdiction of General Accounting Office.

This action is in response to an appeal by Mr. Robert R. Johns from our Claims Division Settlement Certificate No. Z-2818869, dated March 27, 1980, disallowing his claim for a retroactive temporary promotion from grade GS-13 to GS-14 with backpay, for the period November 25, 1973, to February 4, 1976, incident to his employment with the Department of Health, Education, and Welfare (HEW).

On November 25, 1973, Mr. Johns was appointed to a GS-13 position as a non-supervisory Criminal Investigator in the Chicago Regional Office of Investigations and Security, HEW. Prior to his appointment, Mr. Johns was allegedly informed by the hiring officer, Mr. Nathan D. Dick, that he would be employed as a GS-13 acting in a GS-14 supervisory position until funding problems were resolved. The GS-14 position to which Mr. Dick referred was cancelled by HEW on November 1, 1973, and was not reestablished until October 6, 1975. Nevertheless, Mr. Johns was given the title "Acting Investigator-in-Charge" and was allegedly required to perform duties commensurate with the abolished GS-14 position. Mr. Johns continued to function in this capacity until June 1976, when he was promoted to a GS-14 position in the Denver Regional Office.

Mr. Johns filed a claim with HEW for retroactive temporary promotion and backpay for the period November 25, 1973, to June 20, 1976, basing the claim on his alleged detail to the GS-14 position. HEW granted him a retroactive promotion for the period February 4 to June 20, 1976, on the basis that Mr. Johns had been detailed to the reestablished GS-14 position for more than 120 days. The agency denied his claim with respect to the period preceding the date of reestablishment.

Mr. Johns then submitted the matter to the Claims Division of our Office. Our Claims Division disallowed his claim for the reason

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that there was no established, classified grade GS-14 position to which Mr. Johns could have been detailed during the period involved.

In his appeal Mr. Johns maintains that the GS-14 position existed despite the November 1, 1973, cancellation because the position was "orally established" on the same day by the hiring officer. Additionally, Mr. Johns contends that since he was designated "Acting Investigator-in-Charge" and was required to perform duties of the supervisory position, he should have been classified and paid at the GS-14 level.

As a general rule, an employee is entitled only to the salary of the position to which he is officially appointed regardless of the duties he performed. An exception has been made where an employee has been detailed for more than 120 days without Civil Service Commission (CSC) approval to a classified position in a higher grade to which he could have been promoted. Turner-Caldwell, 55 Comp. Gen. 539 (1975), and 56 Comp. Gen. 427 (1977). The remedy of backpay provided by the Turner-Caldwell decisions are available only insofar as an agency had detailed an employee to an established position, classified under an occupational standard to a grade or pay level. FPM Bulletin No. 300-40, May 25, 1977. Accordingly, an employee is not entitled to a retroactive temporary promotion for performing duties of a position which has been abolished and is therefore no longer classified and established. Kenneth J. Wood, B-198059, March 19, 1980. On this basis, the agency's cancellation of the GS-14 position bars Mr. Johns' claim for retroactive promotion and backpay.

In response to Mr. Johns' contention that the position continued to exist despite the cancellation because it had been "orally established" by Mr. Dick, we point out that a hiring officer has no authority to officially establish a position. Statutory authority to establish appropriate classification standards and allocate positions subject to the General Schedule rests with the agency concerned and the Office of Personnel Management (formerly the Civil Service Commission). Further, our Office has consistently held that the Government cannot be bound by the acts of employees which exceed their actual authority as expressed in the statute and regulations. Stephen C. Ehrmann & Robert Fullilove, B-194032, June 19, 1979; 54 Comp. Gen. 747 (1975), and the cases cited therein.

Whether Mr. Johns was performing at a level higher than the GS-13 level that he was officially assigned to is a classification

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matter. Classification claims are under the jurisdiction of the agency and the Office of Personnel Management. 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 backpay 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. Johns' claim.

*Larry R. Van Cleave*  
For the Comptroller General  
of the United States