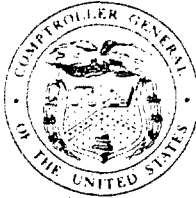


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DECISION



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

FILE: B-199117 [Request for] DATE: October 1, 1980

MATTER OF *R* Walter T. Keith - Retroactive Temporary Promotion and Backpay

DIGEST: Civilian employee of the Department of the Army serving in a WG-05 position claims retroactive temporary promotion and backpay incident to performing higher graded duties of WG-08 and WG-10 positions. Claim is denied where employee has failed to provide sufficient evidence to establish that he was officially detailed to a particular higher-graded position and that he performed the full range of duties of that particular higher-graded position.

Mr. Walter T. Keith, through his authorized representative, requests reconsideration of his claim for retroactive temporary promotion and backpay which was disallowed by our Claims Group on June 12, 1979. For the reasons which follow we must sustain the adjudication of our Claims Group.

Mr. Keith, a civilian employee of the Department of the Army, is claiming retroactive temporary promotion and backpay for the period from April 1974 through October 1977 during which time he alleges he performed duties of positions at pay grade WG-08 and WG-10 levels while receiving only the compensation of his official WG-05 position. The Army found that Mr. Keith was officially detailed to WG-08 level work from January 23, 1977, to March 19, 1977, and that he received a temporary promotion to WG-08 from June 26, 1977, to August 27, 1977. The Army further stated that at no other time was Mr. Keith officially detailed to any established position at a grade level higher than WG-05. Mr. Keith submitted several letters to our Claims Group from various supervisors and fellow employees which indicated that he had, from time to time, performed duties in the Automotive Components Branch worksite commonly done by workers at

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the WG-08 or WG-10 grade level. Our Claims Group denied Mr. Keith's claim finding that he had failed to provide sufficient evidence to demonstrate that he had been officially detailed to an established higher-graded position during the contested periods of his claim.

In regard to the sufficiency of the evidence required to support an award of backpay for an extended detail we should point out that this Office decides cases involving claims against the Government on the basis of the written record. Claims against the United States cannot be allowed unless they are corroborated by Government records or other documentary evidence. As stated in section 31.7 of title 4 of the Code of Federal Regulations, claim settlements are based on the facts as established by the Government agency concerned and by evidence submitted by the claimant, and the burden is on the claimant to establish the liability of the United States for payment. Furthermore, where an administrative agency and a claimant disagree as to the facts in a case, it is our policy to accept the facts as presented by the agency in the absence of clear and convincing proof to the contrary.

In support of his present appeal, Mr. Keith has submitted additional certification letters signed by employees at his facility which purport to show that he had been performing higher graded duties continuously since 1973. Thus Mr. Keith contends that this new documentation, along with previous letters already part of the record here, should establish that he has been "working at the WG-08 and WG-10 levels for many years while being paid at the WG-05 level". While this range of additional documentation indicates that Mr. Keith performed certain duties of both the WG-08 and WG-10 levels, it is nevertheless insufficient evidence that Mr. Keith was officially detailed to any particular higher-graded position during the contested period of his claim.

We have held that employees who are detailed to higher-grade positions for more than 120 days without Civil Service Commission (now Office of Personnel Management) approval are entitled to retroactive temporary promotions with backpay for the period beginning with

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the 121st day of the detail until the details are terminated. Everett Turner and David L. Caldwell, 55 Comp. Gen. 539 (1975) and Reconsideration of Everett Turner and David L. Caldwell, 56 Comp. Gen. 427 (1977).

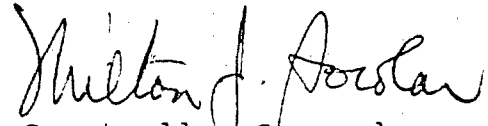
Federal Personnel Manual (FPM) Bulletin No. 300-40, May 25, 1977, was issued by the Civil Service Commission in order to provide additional information to assist agencies in the proper application of our Turner-Caldwell decisions. Paragraph 4 of the FPM Bulletin defines a detail as the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to his regular duties at the end of the detail. Paragraph 8F of the FPM Bulletin requires agencies - in accordance with FPM Supplement 296-31, Book II, Subchapter S3-13, to record details in excess of 30 calendar days on Standard Form 52 or other appropriate form and to file it on the permanent side of the employee's Official Personnel Folder. However, in the absence of this form of documentation, paragraph 8F further allows the employee to provide other forms of acceptable proof of his detail. Such acceptable documentation includes: (1) official personnel documents or official memoranda of assignment, (2) a decision under established grievance procedures, or (3) 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. Mr. Keith's evidentiary contention that he was detailed during the period of his claim must be tested against these prescribed criteria. See Edward M. Scott, B-192099, November 8, 1978.

With the exception of those periods noted above during which Mr. Keith was detailed and then temporarily promoted to a specific WG-08 position, there are no official records which document Mr. Keith's alleged detail during the period of his claim nor is the detail established by any applicable grievance decision. Finally, there is no certification from

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Mr. Keith's immediate supervisor or other management official that Mr. Keith performed the entire range of duties of a specific higher-graded position during the period of the claim. In so finding we are mindful that, as indicated by the above discussion of the documentation necessary to establish a detail, assignment of an employee to the particular higher-graded position need not be formally documented. However, there must be official recognition of his assignment to and performance of the higher graded duties. While the understanding of coworkers and subordinates as to the nature of an employee's duties may be corroborative evidence of a detail, such evidence by itself generally is insufficient to document a detail. See William A. Belvin, B-195557, January 8, 1980. Thus, in the circumstances presented here, Mr. Keith has failed to meet the burden of proof required to justify an award of backpay under our Turner-Caldwell line of cases. See also Truman L. Duhart, B-196259, January 28, 1980; and Loretta T. Smith, B-193723, September 21, 1979, and cases cited therein.

Accordingly, the action taken by our Claims Group disallowing Mr. Keith's claim for retroactive promotion and backpay is sustained.



For the Comptroller General
of the United States