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DECISION



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

FILE: B-199250

DATE: April 15, 1981

MATTER OF: Mark A. Kuzminski - *[Claim For]* Retroactive
Temporary Promotion and Backpay]-
Higher-level duties

DIGEST:

Employee claims that assignment of higher-level duties resulted in his performing work substantially equal to that of a higher-grade position. Where claimant has not established that he was detailed to a higher-grade position, the general rule applies that an employee is entitled only to the salary of the position to which he has been appointed regardless of the duties he may perform. Since employee did not prove fact of detail, claim is denied.

Mr. Mark A. Kuzminski, through his authorized representative, requests reconsideration of his claim for a retroactive temporary promotion with backpay which was disallowed by our Claims Division on April 25, 1980 (Settlement No. Z-2819376). For the reasons which follow we are sustaining the disallowance of our Claims Division.

The issue is whether there is sufficient proof to show that Mr. Kuzminski was actually detailed to and performed the essential duties of an established position at a higher-grade level than he was paid.

Mr. Kuzminski was employed at the Wilkes-Barre Data Operations Center, Social Security Administration, Wilkes-Barre, Pennsylvania, as a GS-3 data transcriber. Mr. Kuzminski claims that since September 2, 1974, he has been performing the duties of a GS-4 data transcriber. The claim for the period of alleged detail was denied by the Social Security Administration because the amount of grade 4 work performed by Mr. Kuzminski never exceeded 15 percent of his total duties during the period in question and, hence, he was not improperly detailed to a higher-graded position.

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Our Claims Division denied Mr. Kuzminski's claim finding that he had failed to provide sufficient evidence to demonstrate that he had been detailed to an established higher-graded position during the contested period of his claim. In his appeal letter to this Office dated May 21, 1980, Mr. Kuzminski's representative states:

"In fact, the whole basis of this Back Pay Claim was because this employee has been, and continues to do the work of a higher graded position without this employee ever being officially temporarily promoted to his higher graded work or ever officially being assigned to this work, through any type of personnel action."

"Mr. Kuzminski performed these duties of an established position classified at a higher grade, but was not officially detailed into this position by any personnel action(s)."

The general rule in cases of this nature is that an employee is entitled only to the salary of the position to which he is appointed, regardless of the duties he performs. Patrick L. Peters, B-189663, November 23, 1977. Where an employee's position undergoes an accretion of duties, the proper course of action for the employee is to request a change in the classification of his position by his agency and, if necessary, to appeal the classification to the Office of Personnel Management (OPM). See 5 C.F.R. Part 511 (1977). Unless and until the employee's position is reclassified to a higher grade and the employee is promoted to that position, he is not entitled to the higher salary. Peters, *supra*. See Patrick J. Fleming, B-191413, May 22, 1978, and September 19, 1978; Francis W. McConnell, B-193975, October 3, 1979, and court cases cited therein.

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In contrast to an accretion of duties, an employee may be detailed to higher-level position. A detail is the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to regular duties at the end of the period. See Federal Personnel Manual (FPM) Bulletin No. 300-40, paragraph 4, May 25, 1977. An employee who is detailed to a higher-grade position for more than 120 days without prior Civil Service Commission (now OPM) approval is entitled to a retroactive temporary promotion with backpay for the period beginning with the 121st day of the detail. Reconsideration of Turner-Caldwell, 56 Comp. Gen. 427 (1977). Since our decision in Turner-Caldwell applies only where an employee has been detailed to an established position, it does not apply where the employee's position has merely undergone an accretion of other duties. Peters, supra; James H. Marshburn, B-180144, October 20, 1976.

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. Kuzminski'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.

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There are no official records of any detail of Mr. Kuzminski to any GS-4 position during the period of his claim. Nor is the detail established by any applicable grievance decision. Finally, although we are aware of the statement by Mr. Kuzminski's supervisor indicating that his satisfactory performance warranted a recommendation for promotion to GS-4, there is no certification from Mr. Kuzminski's immediate supervisor or any other management official that Mr. Kuzminski performed the entire range of duties of the higher-grade position during the period of the claim. Thus, Mr. Kuzminski has failed to meet the burden of proof required to justify an award of backpay under our decision in Turner-Caldwell, *supra*. See Loretta T. Smith, B-193723, September 21, 1979, and cases cited therein.

In regard to the sufficiency of the evidence required to support an award of backpay for an extended detail, this Office decides cases involving claims against the Government on the basis of the written record. 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.

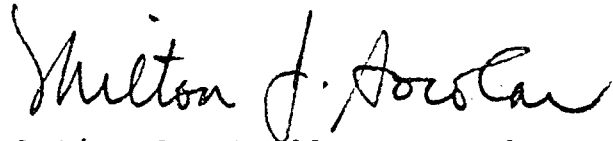
In the absence of sufficient evidence establishing that Mr. Kuzminski was officially detailed to perform the duties of the higher-graded position, there is no legal basis upon which his claim may be allowed. Thus, in the circumstance presented here, Mr. Kuzminski has failed to meet the burden of proof required to justify an award of backpay under our Turner-Caldwell line of cases. See also Walter T. Keith, B-199117, October 1, 1980; and Loretta T. Smith, *supra*.

With regard to the serious allegations made by Mr. Kuzminski's representative concerning the alleged improper procedures followed by the Social Security Administration in the retention of employee records, we believe that, in view of the age of the records in

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question and the unsubstantiated nature of the allegations, no useful purpose would be served by a further investigation of the matter. Additionally, the SSA's Office of Assessment was consulted and that Office believes that the information provided is too little and too subjective to warrant any review on their part.

Mr. Kuzminski also asked for advice concerning his appeal rights. Decisions of the Comptroller General are binding on executive agencies of the United States. Samuel Freiberg, 59 Comp. Gen. 185 (1979). However, independent of the jurisdiction of this Office, the United States Court of Claims and District Courts have jurisdiction to consider certain claims against the Government if suit is filed within 6 years after the claim first accrued. See 28 U.S.C. §§ 1346(a)(2), 1491, 2401, and 2501 (1976).



Acting Comptroller General
of the United States