

DECISION

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

*PLM-1
Schwimer
118905*

FILE: B-202689

DATE: July 8, 1982

MATTER OF: John D. McCrary - Retroactive promotion
and backpay

DIGEST: Employee claims that the Department of the Army committed an unjustified and unwarranted personnel action by failing to reclassify his GS-12 position to GS-13 in a reasonable time after receiving a new classification guide. The Army promoted the employee after a new position description was written and approved, and authorization was received for the additional GS-13 position. His claim for backpay is denied since employee has not shown that Army violated a mandatory regulation by failing to promote him more expeditiously.

This decision is in response to an appeal by Mr. John D. McCrary of our Claims Group's Settlement, Z-2823441, January 15, 1981, denying his request that his promotion from grade GS-12 to grade GS-13, which was effective May 18, 1980, be made retroactively effective to April 1979. For the reasons that follow, we sustain the settlement of the Claims Group.

Mr. McCrary, a supervisory industrial engineer, Department of the Army, Fort Polk, Louisiana, filed a claim for backpay with the Department of the Army on October 11, 1979. The basis of his claim was that the agency committed an unwarranted and unjustified personnel action by failing to act in a timely manner in utilizing a new, "Classification Guide for GS-13 Facilities Engineering Division Chief Positions at the Installation Level." This classification guide was received by his installation on December 13, 1978. After the guide was received, the installation began the process of reclassifying Mr. McCrary's position.

This process included revising Mr. McCrary's job description to meet the new guidelines. Also, the installation had to apply for and receive authorization for additional grade GS-13 positions. These actions took a long time and it was not until February 6, 1980, that the new job description was finally approved by the position management officer. Thereafter, the installation did not

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receive authorization for additional high graded positions until May 12, 1980. We note that the record shows that the delay was not deliberate, but resulted from the fact that a desk audit was done, statistical data had to be interpreted, and there was disagreement as to whether the position qualified for upgrading.

We have previously considered another claim arising out of this same set of reclassification actions at Fort Polk. In Gordon L. Wedemeyer, B-200638, October 9, 1981, a claim by one of Mr. McCrary's colleagues for a retro-active promotion for the same time period was denied. The theory used in that case was somewhat different, in that the claim was based almost entirely on the classification aspects of the matter, rather than on the allegation of an unwarranted or unjustified personnel action as raised by Mr. McCrary.

Generally, employees have no vested right to be promoted at any specific time. However, an agency may, through the promulgation of regulations or the negotiation of a collective-bargaining agreement, vest in specified employees the right to be promoted on an ascertainable date as provided by the regulations or agreement. 54 Comp. Gen. 69 (1974).

In this case, Mr. McCrary is claiming that the installation had until April 1979, to upgrade his position based on the Classification Guide for GS-13 Facilities Engineering Division Chief Positions. He alleges that the classification guide was a regulation which required his position to be upgraded within a reasonable time, and that Army Civilian Personnel Regulation (CPR) 501.4-12 (Change 6) requires this new guide to be applied within 120 days.

In that regard, we have held that when a position is reclassified to a higher grade an agency must either promote the incumbent, if qualified, or remove him not later than the beginning of the fourth pay period after the date of the reclassification action. 53 Comp. Gen. 216 (1973). However, we disagree with Mr. McCrary's contentions for the following reasons.

First, the Classification Guide for GS-13 Facilities Engineering Division Chief Positions at Installation Level did not set up an agency-wide policy that required his

installation to promote him to a GS-i3 position. This classification guide states that before the position can be classified at a GS-13 level, quantitative factors such as population served, size of budget, etc., should be considered. Furthermore, CPR 501.4-12, cited by Mr. McCrary, only requires that a review of the classification be made within 120 days, which was clearly done here.

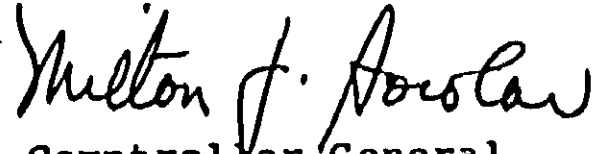
The delay in the reclassification of Mr. McCrary's position resulted from the fact that a desk audit was necessary and there was some question as to whether his position could be reclassified to a higher grade. We note that when an employee performs duties at a grade level higher than that in which his position is classified, and is successful in obtaining reclassification of his position and promotion, no entitlement exists for compensation at the higher grade level prior to the date all necessary administrative actions are completed to effect the promotion. 52 Comp. Gen. 631 (1973); 39 Comp. Gen. 583 (1960); 5 C.F.R. 511.701(a)(i) (1982). See also United States v. Testan, 424 U.S. 392 (1976).

In this case the administrative actions that were required to be completed before a promotion could become effective were a change in the position description and authorization for the establishment of more higher-graded positions. Until these events occurred there was no established position into which Mr. McCrary could be promoted. For Mr. McCrary's position to be established, the Army regulations require that three things must be done, and they are set forth in CPR 501.6-1c. First, a manpower space and funds must be available. Second, a properly signed job description must be prepared and officially authenticated. Third, the position must be entered in the personnel control file as a result of processing a personnel document. The record shows that until February 6, 1980, none of these three requirements were met for the GS-13 position sought by Mr. McCrary. After February 6, 1980, the position description was approved by the appropriate authority, but that was the only one of the three requirements set forth in the CPR for establishment of positions that was met. It was not until May 12, 1980, that all three requirements were satisfied and the GS-13 position was established. Thus, until all of the requirements were met, there was no

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position into which Mr. McCrary could be promoted. See Wedemeyer, supra. We find no violation of any mandatory or nondiscretionary provision in the agency's failure to promote Mr. McCrary at an earlier time.

Accordingly, our Claims Group's denial of Mr. McCrary's claim is sustained.



Acting Comptroller General
of the United States