

DECISION



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S. O. A. 1-2
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

118238

FILE: B-204521

DATE: April 26, 1982

MATTER OF: Connie V. Marcum

DIGEST: Employee seeks retroactive reclassification and backpay for the period during which she performed the duties of a higher grade position. Claim is denied since Federal employees are entitled only to the salary of the position to which they are appointed, regardless of the duties performed. Even though a position is subsequently reclassified to a higher grade consistent with the duties the employee has been performing, such action may not be made retroactively effective. Therefore, the employee is not entitled to backpay. Testan v. United States, 424 U.S. 392 (1976).

This action is in response to the appeal by Ms. Connie V. Marcum of the settlement of our Claims Group, issued June 24, 1981, by which her claim for retroactive reclassification and accompanying backpay was disallowed. The settlement of the Claims Group is sustained since the employee was entitled only to the salary of the position to which she was appointed until such time that she was officially promoted, even though she may have performed the duties of the higher grade position prior to receiving the promotion.

Ms. Marcum, an employee at the United States Army Logistics Center, Fort Lee, Virginia, was formerly employed as a budget clerk, grade GS-5, at the Directorate of Plans, Training and Security at Fort Lee. According to the record, she assumed many of the duties normally performed by the budget analyst (grade GS-7) when a position so classified was abolished in 1971. In December 1977 when the budget clerk position she held was moved to a new office, she transferred with the position. From 1972, when she was promoted to the position of budget clerk (grade GS-4), through December 1978, several attempts were made to have her position reclassified as budget analyst. However, the position continued

to be classified as budget clerk, although Ms. Marcum's supervisor at the new office expressed the view that she was performing budget analyst duties.

In December 1978 Ms. Marcum accepted a position as budget analyst, grade GS-5, at the Army Logistics Center, after which the position she had held at the Directorate of Plans, Training and Security was reclassified as budget analyst, grade GS-7.

In January 1979, 1 month after Ms. Marcum assumed the grade GS-5 budget analyst position at the Army Logistics Center, that office requested that her position be reclassified as budget analyst, grade GS-7. The request was returned without action along with a note stating that she would not qualify for promotion until December 1979.

By letter of record, dated August 21, 1980, Ms. Marcum requested "retroactive pay for the period December 1977 until the present." In that letter she contends that the agency's refusal to reclassify her position in response to the January 1979 request was unjust since by that time she had gained 23 additional months of experience as a budget analyst. The 23 months to which she refers is the period since 1977 when her former supervisor had stated that she was performing budget analyst duties. She also asserts, by letter dated November 13, 1980, that the agency's delay since 1977 in promoting her to the position of budget analyst prevented her from fulfilling the "time-in-grade" requirement for a temporary promotion to a grade GS-9 position in August 1980. Consequently, she says, she was required to accept a 60-day detail to that position.

The Claims Group denied Ms. Marcum's claim on the basis that in this case there is no statutory basis for retroactive reclassification or for backpay during periods of wrongful position classification. In appealing from that settlement, Ms. Marcum suggests that the Claims Group's disallowance inappropriately focused on the period from December 1977 to December 1978 and she asks that we reconsider her claim for the period beginning

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in January 1979 when she was denied a promotion to a grade GS-7 budget analyst position at the Army Logistics Center.

Whether addressed to Ms. Marcum's contention that she is entitled to backpay because she performed the duties of a higher grade position from December 1977 until December 1978, or that her position should have been reclassified and that she should have been promoted to the higher grade position from January 1979 through the date of her claim, the general rule is that an employee is entitled only to the salary of the position to which he has been appointed, regardless of the duties he actually performs. Thus, an employee who is performing duties of a grade level higher than that of the position to which he is appointed is not entitled to the salary of the higher level position unless and until the position is classified to the higher grade and he is promoted to it. 55 Comp. Gen. 515, 516 (1975); see also Matter of Godwin, B-202688, October 23, 1981.

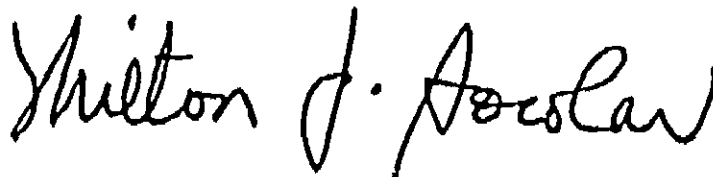
The Office of Personnel Management is authorized by the Classification Act, 5 U.S.C. §§ 5105-5115, to prescribe regulations for and supervise the review of an agency's classification. If an employee believes that the position to which he is appointed is improperly classified or wishes a review of the grade of his position, it is proper for the employee to file a classification appeal with either the employing agency or the Office of Personnel Management. This procedure affords the appropriate authorities an opportunity to investigate the matter and issue a formal ruling on the appeal. Matter of Efnor, B-199460, February 19, 1981.

However, the Supreme Court has held that a reclassification action upgrading a position may not be made retroactively effective for purposes of effecting the Back Pay Act, 5 U.S.C. § 5596. United States v. Testan, 424 U.S. 392 (1976). Thus, the fact that a position is reclassified to a higher level and the employee is promoted does not entitle him to retroactive pay at the rate of the higher level position, even though he may have performed the duties of that position prior to

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its reclassification. Matter of Konrady, B-193555, January 26, 1979; see also Matter of Efnor, supra, and B-180144, September 3, 1974.

Accordingly, we affirm the denial by the Claims Group of Ms. Marcum's claim for retroactive reclassification and backpay for the periods of December 1977-78 and January 1979 until the end of the period covered by her claim.

for 
Comptroller General
of the United States