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DECISION



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

FILE: B-220786

DATE: March 3, 1986

MATTER OF: John E. Boren III - Position
Reclassification and Backpay

DIGEST:

1. An employee was serving in a position classified as grade GS-11. That position was eventually reclassified as grade GS-12. The employee claims entitlement to backpay for period prior to the date of reclassification. The claim was first received in this Office on October 10, 1984. Since the period of the claim spanned 12 years, that portion of the claim which arose before October 10, 1978, is barred from consideration because 31 U.S.C. § 3702(b)(2) (1982) limits consideration of such claims on their merits to the 6-year period prior to the date of receipt here.

2. An employee was serving in a position classified at grade GS-11. That position was eventually reclassified as grade GS-12. The employee claims entitlement to backpay for period prior to the date of reclassification, asserting that since the duties performed at the lower grade were the same as those required to be performed at the higher grade, the position should always have been at grade GS-12. The claim is denied. Neither the Classification Act, 5 U.S.C. §§ 5101 et seq., nor the Back Pay Act, 5 U.S.C. § 5596, creates a substantive right to backpay for a period of alleged improper classification. United States v. Testan, 424 U.S. 392 (1976).

John E. Boren III, a former employee of the Forest Service, United States Department of Agriculture, has appealed the disallowance of his claim by settlement of our Claims Group, Z-2854898, May 20, 1985. The issue

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involves his entitlement to backpay due to the alleged improper classification of his position for the period July 7, 1970, through November 18, 1982. We conclude that he is not so entitled for the following reasons.

The facts are brief. Mr. Boren was employed as a Criminal Investigator with the Forest Service at the Kisatchie National Forest, Pineville, Louisiana. He served in that capacity in grade GS-11 from July 7, 1970, through November 18, 1982. On that latter date, his position was reclassified, based upon his appeal to the Office of Personnel Management (OPM), to grade GS-12. Following this reclassification, Mr. Boren claimed that the position he held between 1970 and 1982 had been improperly classified for the entire period because the duties he performed were the same throughout the period and were the same as those he was required to perform as a grade GS-12. It is his contention that his position should always have been grade GS-12.

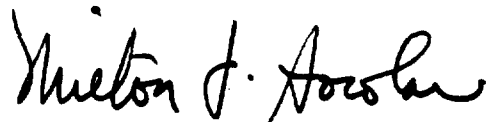
Under 31 U.S.C. § 3702(b)(1) (1982) a monetary claim against the United States cognizable by this Office must be received here within 6 years of the date that claim first accrues. We have held that timely receipt of a claim here constitutes a condition precedent to a claimant's right to have that claim considered on its merits. Furthermore, the filing of such claim with any other government agency does not satisfy the requirements imposed by these provisions. Frederick C. Welch, 62 Comp. Gen. 80 (1982). We have also held that a backpay claim accrues on the date the services were rendered and on a daily basis for each day services were rendered thereafter. 29 Comp. Gen. 517 (1950); Burke and Mole, 62 Comp. Gen. 275 (1983).

Our file shows that the earliest correspondence received in this Office concerning Mr. Boren's backpay claim was received here October 10, 1984. Therefore, that portion of his claim which arose prior to October 10, 1978, is forever barred from consideration. However, that portion of his claim for the period October 10, 1978, through November 18, 1982, is not barred and may be considered on its merits.

Chapter 51 of Title 5, United States Code, provides a system whereby General Schedule positions in the Federal government are grouped and identified by classes and grades based upon their duties, responsibilities and qualification requirements. Individual agencies, under guidance of OPM, are authorized to place positions in appropriate classes and grades consistent with their needs, including the changing of the classification and grade structure of a position where indicated, in conformity with standards published by OPM. Classification actions establishing, upgrading, or changing a position may not be made retroactive. 5 C.F.R. §§ 511.701 et seq. The Supreme Court has held that neither the Classification Act, 5 U.S.C. §§ 5101 et seq., nor the Back Pay Act, 5 U.S.C. § 5596, creates a substantive right to backpay for a period of improper classification. United States v. Testan, 424 U.S. 392 (1976).

It is fundamental that in order for an employee to be entitled to compensation for employment by the Federal government in a particular position or grade level, the position or grade must be recognized and administratively established at the time the individual is performing such duties. This is true even where an individual is occupying a position at one grade level and is performing duties which would be performed by an employee classified at a higher grade. It is also true that an employee is only entitled to the salary of the position to which he is officially appointed. See United States v. Testan, above, 424 U.S. at 402. See also A. Leon Wilson v. United States, 229 Ct. Cl. 510 (1981).

In the present situation, Mr. Boren's position was reclassified from grade GS-11 to grade GS-12, by action of OPM dated November 18, 1982. Therefore, under the law, that is the earliest date that he is entitled to the increased pay for the reclassified position. His claim for backpay prior to that date is denied.



Acting Comptroller General
of the United States