



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Martin Kirchhausen

File: B-261661

Date: December 26, 1995

DIGEST

Employee who held a deputy director position is not entitled to backpay based on an alleged overlong detail to the higher-graded director position since his position description as deputy required him to perform the director's duties on an acting basis. Employee's service as acting director entailed performing responsibilities within the scope of his regular position as deputy director and, therefore, did not constitute a detail to the director position.

DECISION

The Director, Center for Personnel Operations, Social Security Administration (SSA), forwards for our review the appeal of Mr. Martin Kirchhausen from SSA's denial of his backpay claim. Mr. Kirchhausen seeks backpay on the basis that he was detailed to a higher-graded position beyond the agency-imposed limit of 30 days. For the reasons stated hereafter, we affirm the agency's denial of the claim.

BACKGROUND

Mr. Kirchhausen was the GS-14, Deputy Director of the Communications Management Office, Division of Integrated Telecommunications Management (DITM). In that capacity and in accordance with his position description, he assumed the duties of the director, DITM during short-term absences of the director. In 1992, the incumbent director, a GS-15, was selected as a Senior Executive Service candidate. On October 1, 1992, she began her first long-term assignment outside of DITM and Mr. Kirchhausen took over her duties as director. Mr. Kirchhausen performed the duties of the director through September 16, 1994, when he retired.

On December 7, 1994, Mr. Kirchhausen filed a claim with SSA for backpay, asserting that his service as acting director after October 1, 1992, constituted an overlong

detail to a higher-graded position for which he should have received a temporary promotion and compensation at the GS-15 level. He relied on a provision in the Promotion Plan for SSA Headquarters Management Officials, PMS No. h16, Chapter S335-2, October 18, 1992, which states in part:

"When an employee is temporarily assigned to a position at a higher grade for a period in excess of 30 days, the assignment must be made via temporary promotion, effective the first day of the assignment, unless the employee does not meet the qualifications standards or time-in-grade requirements for promotion to the position."

On March 30, 1995, SSA denied the claim on the basis that Mr. Kirchhausen performed his duties as acting director during the period in accordance with the responsibilities of his position as deputy director, which was designed as an "alter ego" to the director. The agency pointed out that the position description for deputy director states:

Basic Function

"Serves as full deputy and 'alter ego' to the Director, Division of Communications. Shares responsibility with the Director for collaboration in all functions of the Division's programs including planning, formulating, adopting, and executing policies, objectives, and goals relating to the present and future operations. In the absence of the Director, assures [sic] responsibility for division operations and acts on any and all matters with full authority of commitment on matters within the jurisdiction of the Division Director."

The agency found, therefore, that Mr. Kirchhausen was not assigned to a higher-graded position requiring a temporary promotion and additional compensation.

Mr. Kirchhausen appeals the denial of his claim to our Office stating that the length of time (almost 2 years) he performed the director duties, coupled with the absence of the incumbent director for long-term training, differentiates the claim period from other times he assumed the director's duties and warrants backpay.

ANALYSIS AND CONCLUSION

To establish a claim for backpay based on a detail to a higher-graded position, a claimant must show that (1) an agency regulation or agreement requires a temporary promotion for such a detail; and (2) he or she actually was detailed to a

higher-graded position. Turner-Caldwell III, 61 Comp. Gen. 408 (1982); Albert C. Beachley and Robert S. Davis, 61 Comp. Gen. 403 (1982).

The first test is satisfied in this case. The SSA Promotion Plan cited by the claimant explicitly requires that a detail to a higher-graded position for a period in excess of 30 days be effected by temporary promotion unless the employee does not meet the qualifications or time-in-grade requirements for promotion to that position. The agency has not questioned the claimant's eligibility for a temporary promotion under the promotion policy if his service as acting director constituted a detail to the director's position.

With respect to the second test, the claimant has the burden of establishing that he or she was, in fact, detailed to a higher-graded position. See, e.g., Dennis F. Morgan, B-203926, Sept. 22, 1981. Where the agency's determination is reasonable, we will not substitute our judgment for that of the agency. See, e.g., Jimmie D. Brewer, B-205452, Mar. 15, 1982.

Our decisions generally treat situations in which an employee's position description requires the incumbent to assume the duties of a higher-graded position as being distinguishable from a detail. See Katie B. Keys, B-201946, June 16, 1981; Allen C. Howard, B-198393, Mar. 17, 1981; and Charles E. Reardon, Jr., B-194694, Nov. 23, 1979. But see Turner-Caldwell I, 55 Comp. Gen. 539 (1975). These decisions, however, do not specifically discuss whether, or if so when, such a situation might constitute a "detail" to the higher-graded position.

In the context of federal personnel law, a "detail" is the temporary assignment of an employee to a different position involving duties other than those the employee regularly performs. See, e.g., Forest C. McKown, B-198120, Sept. 18, 1981. Therefore, in our judgment, an employee's assumption of the duties of another position on an acting basis when specifically required by the employee's own position description fundamentally does not constitute a detail to the other position. Instead, the employee is engaged in carrying out responsibilities within the scope of his or her regular position.

This is not an unusual situation. As we observed in Katie B. Keys, *supra*:

"Provisions in position descriptions that incumbents substitute for absent higher grade employees are not uncommon and they usually have purposes quite apart from any consideration of details . . ."

More generally, we noted in Forest C. McKown, *supra*:

"[T]here are innumerable instances in the government service where employees of a lower classification perform duties of a higher

classification, but as a general rule an employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties he performs."

While the claimant maintains that the length of his service as acting director warrants a different result in this case, his position description imposed no time limit on his obligation to act as director. Moreover, regardless of the duration, it is not clear how his service as acting director departed significantly from his regular duties as deputy. Based on a reading of his position description, quoted above, it appears that he would have continued to perform essentially his same duties as deputy during this period but without sharing responsibility with a director.

Accordingly, we conclude that Mr. Kirchhausen's service during the period in question did not constitute a detail to the director's position, and we affirm SSA's denial of his claim.

/s/ Seymour Efros
for Robert P. Murphy
General Counsel