

DECISION

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

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FILE: B-183214

DATE: JUL 9 1976

MATTER OF: Sam R. Sutton - Claim for Retroactive Promotion
and Backpay

DIGEST: Employee claimed retroactive promotion and accompanying back pay due to alleged wrongful classification. Employee has no entitlement under 5 U. S. C. §§ 5101-5115 or implementing Civil Service regulations, and Supreme Court in United States v. Testan, 44 U. S. L. W. 4245, March 2, 1976, held that Back Pay Act, 5 U. S. C. § 5596 (1970) does not apply to wrongful classification.

By a letter dated November 4, 1975, Mr. Sam R. Sutton appealed Certificate of Settlement No. Z-2552530, issued September 30, 1975, by our Transportation and Claims Division (now Claims Division) which disallowed Mr. Sutton's claim for a retroactive promotion from grade GS-10 to GS-11 and accompanying back pay from January 6, 1967, to January 14, 1968. The claim is predicated upon an alleged wrongful classification.

Mr. Sutton requested reclassification of his position from GS-10 to GS-11 in January 1967. The record shows that the personnel office at the New Orleans District of the Corps of Engineers originally treated his request for reclassification as an appeal of an earlier personnel action originating in 1961. As a result of that treatment of the request and difficulties, such as applying certain standards to the position, reclassification of Mr. Sutton's position was delayed until January 1968. Hence, Mr. Sutton contends that his promotion should be made effective to the date he first requested reclassification of his position.

We have consistently held that the classification of positions in the General Schedule is governed by the Classification Act of 1949, as amended, now codified at sections 5101-5115 of title 5, United States Code. Section 5115 empowers the Civil Service Commission to prescribe regulations regarding the classification of positions. The regulations of the Commission are contained in title 5 of the Code of Federal Regulations, and section 511.701, title 5, states that "[t]he effective date of a classification action taken by an agency is the date the action is approved in the agency or a subsequent date specifically stated." These regulations are amplified in the Federal Personnel Manual, Chapter 511, Section 7-1a, which states that "[t]he agency may not make the [classification] action retroactively." See also FPM Chapter 531, Section 2-7 (a);

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Dianish v. United States, 183 Ct. Cl. 702, 707-709 (1968). The only provision for a retroactive effective date in a classification action is when there is a timely appeal from a classification action which resulted in a loss of pay and on appeal the prior action is reversed at least in part. See 5 C.F.R. § 511.703.

In addition, the United States Supreme Court held in United States v. Testan, 44 U.S.L.W. 4245, March 2, 1976, that neither the Classification Act nor the Back Pay Act, 5 U.S.C. § 5596 (1970), creates a substantive right to back pay based on wrongful classification actions. In light of the Testan case and since Mr. Sutton's case does not qualify for retroactive promotion and back pay under Civil Service regulations, there is no authority under which his claim for back pay may be granted.

Accordingly, the certificate of settlement, issued September 30, 1975, denying Mr. Sutton's claim for retroactive promotion and back pay is sustained.

Paul G. Dembling

For the Comptroller General
of the United States