

J. Wicks, 11/11/78

DECISION



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

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FILE: B-192437

DATE: September 20, 1978

**MATTER OF: Marvin R. Dunn - Detail to Higher Grade
Position**

DIGEST: Employee detailed to the same higher grade position from September 29, 1975, until July 2, 1977, is entitled to backpay from the 121st day after the beginning of the detail until July 2, 1977, the last day prior to his promotion to the higher grade position. The fact that the position to which he was detailed was organizationally transferred from one Army command to another effective July 1, 1976, does not serve to terminate the initial detail as of that date and initiate a second separate detail inasmuch as he continued to perform the same duties of the same position description under both commands.

This decision is rendered in response to a request by the Chief Counsel, U. S. Army Tank-Automotive Material Readiness Command (TACOM), concerning the claim of Marvin R. Dunn for retroactive temporary promotion and backpay for the period from July 1 to October 28, 1976. The submission was not accompanied by a voucher and was not submitted by an individual to whom this Office is authorized to render decisions. See 31 U.S.C. §§ 74 and 82d. However, in view of the fact that the problem involved appears to be of a recurring nature, we are rendering a decision. Based on his detail to the higher grade GS-13 position of Program Analyst, Mr. Dunn has been determined to be entitled to backpay from January 27, 1976, the 121st day of his detail, through June 30, 1976, and from October 29, 1976, through July 2, 1977. The period from July 1 to October 28, 1976, for which he claims backpay represents the 120 days following the date of which the position to which he was detailed was transferred incident to a transfer of functions between the TACOM and the newly established U. S. Army Tank-Automotive Research and Development Command (TARADCOM).

Effective September 29, 1975, Mr. Dunn was formally detailed within TACOM for a proposed period of 60 days from the grade GS-12 position of Mechanical Engineering Technician which he held since February 3, 1974, to the position of Program Analyst, GS-345-13, Job No. 16183. As of July 1, 1976, TARADCOM was

established as a new command separate and apart from TACOM. The functions formerly performed by the provisional directorate within TACOM, including the position to which Mr. Dunn was detailed, were transferred to TARADCOM on that date. Notwithstanding the organization change, Mr. Dunn continued without a break in assignment to perform the duties of the GS-345-13, Job No. 16183 position to which he had been detailed until July 3, 1977, when he was competitively promoted to that same position.

The Chief of Staff of the successor command to TACOM, the U.S. Army Tank-Automotive Material Readiness Command, determined that Mr. Dunn was entitled to a retroactive temporary promotion to grade GS-345-13 for the period from January 27, 1976, the 121st day of his detail, through June 30, 1976, the last day on which the position to which he was detailed was under the jurisdiction of TACOM. With respect to the period subsequent to July 1, 1976, the Acting Commanding General of TARADCOM determined that Mr. Dunn was entitled to a retroactive temporary promotion to grade GS-345-13 for the period beginning October 29, 1976, the 121st day after which that position was transferred to TARADCOM, and ending July 2, 1977, the last day prior to his competitive promotion to that position.

The effect of the TARADCOM determination denying retroactive promotion and backpay from July 1 to October 29, 1976, is to consider the transfer of functions from TACOM to TARADCOM as terminating Mr. Dunn's original detail on June 30, 1976, and initiating a separate and distinct detail under TARADCOM commencing July 1, 1976. So viewed, Mr. Dunn would be entitled to retroactive temporary promotion for the second detail only after having served under that detail in excess of 120 days. Turner-Caldwell, 55 Comp. Gen. 539 (1975), aff'd. at 56 id. 427 (1977). The certifying officer questions whether Mr. Dunn's detail was properly regarded as two separate details such that the second 120-day period from July 1 to October 28, 1976, was properly excluded in determining his entitlement to backpay, or whether he is to be regarded as having performed under a single continuous detail and hence entitled to backpay for the entire period from January 27, 1976, through July 2, 1977. In support of the latter view it is pointed out that the position to which Mr. Dunn was detailed under TARADCOM was the identical GS-345-13 position to which he was detailed under TACOM and that he continued, uninterrupted by the reorganization, to perform the same duties, in the same office at the same desk through July 2, 1977.

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We have not been furnished documentation pertinent to the establishment of TARADCOM as a separate command. However, based on such information as is provided, it appears that personnel positions previously under TACOM were transferred intact to TARADCOM on July 1, 1976. Although certain positions may subsequently have been reclassified to comport with the new organizational structure, the CS-345-13 position to which Mr. Dunn was detailed remained in effect indefinitely, as evidenced by his competitive promotion to that same position within TARADCOM on July 3, 1977.

Where an employee is detailed to a higher grade position and the agency fails to seek Civil Service Commission approval to extend the detail for a period past 120 days, the agency has a duty to award the employee a retroactive temporary promotion and backpay if he continues to perform those higher grade duties. Turner-Caldwell, supra. Each detail is a separate personnel action and for the purpose of applying the Turner-Caldwell decision each detail must have exceeded 120 days before the determination must be made that the employees must receive a retroactive temporary promotion. Thus, an employee detailed for several non-continuous periods to the same higher grade position may not aggregate the number of days in each period and apply the 120 days to that total. Matter of William G. Atherton, B-173783, 200, July 31, 1978. Similarly, when an employee is detailed for continuous periods to two higher grade positions, both at the same higher grade but each a distinct position, each detail is treated as a separate and distinct personnel action and the employee is entitled to backpay only after serving 120 days under each detail. Matter of James F. Ford, B-191128, July 24, 1978.

Mr. Dunn was detailed for a continuous period from September 29, 1975, to July 2, 1977, to the same higher grade position. The only basis offered for regarding his continued assignment as two distinct details is the fact that as of July 1, 1976, the position to which that higher grade attached was transferred from under the jurisdiction of TACOM to TARADCOM. Under the circumstances, we do not believe it proper to regard the transfer of functions between Army commands as terminating Mr. Dunn's initial detail.

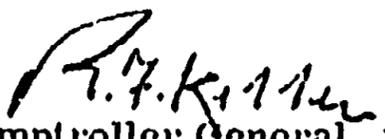
The continuity of a detail is to be determined by the duties performed and the position to which detailed, and not by matters of form such as reorganizations within agencies. Circumstances

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similar to Mr. Dunn's were considered in Matter of William C. Yancey, B-183086, September 7, 1977, involving a reorganization within the Federal Trade Commission. The claimant in that case had been detailed within the Office of the Comptroller to the grade GS-15 position of Comptroller. Upon reorganization some 8 months later, the Office of the Comptroller became the Division of Budget and Finance and the claimant was directed to serve as Acting Chief of the new division. No new position description was prepared for the office of Chief until more than a year later and in the interim the claimant continued to perform under the Comptroller position description to which he had been initially detailed. In that case, we held that the reorganization and the redesignation of the higher grade position from Comptroller to Chief, Budget and Finance Division did not terminate the initial detail. Mr. Dunn's case appears to involve similar circumstances in which considerations of form ought not to cloud the substance of the matter.

Since Mr. Dunn continued to be detailed to a single position description for the continuous period from September 29, 1975, to July 2, 1977, the shift of that position between Army commands does not itself divide that detail and Mr. Dunn is entitled to backpay for the entire period from January 22, 1976, to July 2, 1977. Our Claims Division will issue a settlement in the amount found due for that portion of his claim for backpay for the period from July 1 to October 28, 1976.

Deputy


Comptroller General
of the United States