

11980

PLM-1
Batesford

DECISION



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

FILE: B-195476

DATE: November 9, 1979

MATTER OF: Dell T. Wilkinson - [Claim for retroactive temporary promotion and backpay]

DIGEST: Civilian employee of Air Force in not entitled to AGC00035 retroactive temporary promotion and backpay under Turner-Caldwell, 56 Comp. Gen. 427 (1977), although she was detailed to higher grade military position since employee could not have been temporarily promoted into military position and Turner-Caldwell remedy is available only when employee satisfies requirements for temporary promotion.

This action is in response to an appeal by Ms. Dell T. Wilkinson from our Claims Division's settlement certificate of November 18, 1978, which denied her claim for retroactive temporary promotion and backpay.

Ms. Wilkinson was assigned as an Occupational Health Nurse, GS-7, and as a Clinical Nurse, GS-7, in the United States Air Force Hospital at Robins Air Force Base from April 2, 1969, to September 30, 1976. From October 1, 1970, to July 1, 1972, however, she performed duties as the Acting Supervisor for the Outpatient Clinic. In order to obtain experience credit for those duties she submitted a SF-172, Supplemental Experience and Qualifications Statement, along with a position description of a Supervisory Clinical Nurse, classified at the GS-9 level.

Although the record supports Ms. Wilkinson's contention that she performed duties as the Acting Supervisor of the Outpatient Clinic, it also shows that those duties were assigned to a military position for which qualified military personnel were not available. In addition, the Chief Nurse, USAF Hospital, Robins AFB, stated that the duties of the Supervisor of the Outpatient Clinic were different from those outlined in the Supervisor Clinical Nurse job description which Ms. Wilkinson submitted, and hospital records show that there was no other established civilian position which was identical or similar to the Outpatient Clinic Supervisor position. Nevertheless, Ms. Wilkinson claims backpay at the GS-9 level for the period in question. Her claim is based on Reconsideration of Turner-Caldwell, 56 Comp. Gen. 427 (1977), in which the Comptroller General affirmed earlier determinations that employees detailed to higher graded

DLG03315

110815

007738

B-195476

positions for more than 120 days without prior Civil Service Commission approval are entitled to retroactive temporary promotions and backpay if certain conditions are met.

On November 15, 1977, the Air Force denied Ms. Wilkinson's claim on the basis that her detail was not to an established position. On November 18, 1978, our Claims Division also disallowed her claim on the basis that the position for which she claims a retroactive temporary promotion and backpay was a military position and not one which was established and classified to a civilian grade or pay level during the period of her claim.

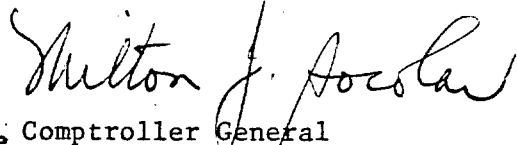
The general rule is that an employee is entitled only to the salary of the position to which he has been appointed, regardless of the duties he performs. See Patrick L. Peters, B-189663, November 23, 1977. However, an exception has been made when an employee has been detailed to an established higher graded position for more than 120 days without prior Civil Service Commission approval. In such cases we have allowed retroactive temporary promotions with backpay for the period beginning with the 121st day of the detail until the detail was terminated, if the employee met all applicable statutory requirements for promotion. 56 Comp. Gen. 427 supra.

We are aware of no statutory authority which would allow an employee in the civil service who is temporarily assigned to perform the duties of a military position to be promoted into that military position. In this connection we have held that since civilian employees who are temporarily assigned to a military position could not have been temporarily promoted to those positions, corrective action under our Turner-Caldwell line of decisions would not be applicable. Defense Communications Agency, B-183086, July 12, 1977. Thus, employees temporarily assigned to higher grade military positions may not be given retroactive temporary promotions to the equivalent civilian grade, Defense Communications Agency, supra; Donald R. Konrady, B-193555, January 26, 1979, and Mrs. M. Virginia Conklin, B-194251, April 23, 1979.

The remedy which was available to Ms. Wilkinson while she was performing the duties of the military positions was to file a position classification appeal to have her position classification reviewed and possibly upgraded. See 5, Code of Federal Regulations, Part 511, Subpart F. However, that remedy is available only while the employee is performing the higher level duties and may not be applied retroactively.

B-195476

In view of the above, there is no authority to grant Ms. Wilkinson a retroactive temporary promotion and backpay. Accordingly, the action taken by our Claims Division is sustained.

A handwritten signature in cursive script, reading "Milton J. Focolan".

For the Comptroller General
of the United States