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Plan I

DECISION



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

FILE: B-194890

DATE: March 28, 1980

MATTER OF: *[Claim For]*
Vernon P. Humphries - Retroactive
Temporary Promotion and Backpay

DIGEST: Former GS-9 employee of Bureau of Indian Affairs, Department of Interior, claims retroactive temporary promotions and backpay for work allegedly performed at GS-11 and GS-12 grade levels. In the absence of sufficient documentation establishing that employee was officially detailed to perform duties of the higher-grade positions and that he performed such duties during specific periods of time, claim may not be allowed.

AGC 20006

Mr. Vernon P. Humphries, a former employee of the Bureau of Indian Affairs, United States Department of the Interior, has appealed the settlement certificate (Z-2714364) dated March 16, 1979, issued by our Claims Division, which denied Mr. Humphries' claim for retroactive temporary promotion and backpay. The Claims Division concluded that the claimant had failed to provide sufficient evidence to show that he was, in fact, detailed to a higher-grade position and that he merely performed some of the duties of a higher-grade position. Upon review of the evidence of record, the denial of a retroactive temporary promotion and backpay is sustained.

The facts and circumstances involved in the claim, briefly stated, are as follows: Mr. Humphries was employed by the Bureau of Indian Affairs (BIA) in September 1966. In April 1976, as a result of a reduction in force, his services with the BIA were terminated. The claimant states that he was hired at the GS-9 grade level but during the period of his employment with the BIA, he was assigned to perform work at the GS-11 and GS-12 grade levels.

In support of his claim, Mr. Humphries has submitted written statements by a former supervisor and three former co-workers. In his statement dated January 2, 1975, Mr. William F. McNamara, states that from 1966 through August 1974, he was Mr. Humphries'

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immediate supervisor in the Division of Facilities Engineering, BIA. He reports that during this period, Mr. Humphries' work was always satisfactory and that Mr. Humphries was called upon to fill GS-11 and GS-12 positions at several different times. Mr. McNamara states that some of these assignments were in excess of a year and that Mr. Humphries was solely in charge. He says that the claimant was always willing to perform higher-level work to get the job accomplished. He concludes that Mr. Humphries should have been promoted to a GS-11 position and subsequently to a GS-12 position during the above-mentioned period.

In his statement dated November 12, 1974, Mr. Steve Silan, a former co-worker, stated that he and Mr. Humphries had worked together as inspectors, in the Contract Construction Management Branch of the BIA since approximately 1966. Mr. Silan reports that he was an Engineering Technician, GS-12. He says that in 1966, Mr. Humphries was assigned to the Sanostee School project as an assistant inspector. Prior to completion of the project, Mr. Silan reports that the claimant was assigned as chief inspector and completed the project. Mr. Silan also states that in late 1967, 1969, 1970, and 1971, Mr. Humphries was assigned and performed the duties of an assistant inspector, GS-11, on several projects. Mr. Silan says that Mr. Humphries replaced him during his absence and performed the duties at the GS-12 grade level.

Mr. Alfred J. Quigley, a former co-worker, in his statement of November 7, 1974, reports that Mr. Humphries performed work at the GS-11 and GS-12 levels in the BIA. He states that the agency records show that Mr. Humphries relieved one Jim Ingram, a GS-11, on a project and that he handled the project for approximately 1 year. The contract for the project was for about \$900,000. Mr. Quigley reports that the claimant took complete charge of a project under a contract for approximately \$1,080,000.

A statement made by another former co-worker, L.A. Peltz, dated November 22, 1974, relates that at least two BIA construction projects originally assigned to GS-11 construction inspectors were subsequently reassigned to Mr. Humphries, a GS-9 employee. On one project, under a contract for approximately \$250,000, one James E. Ingram, project inspector, GS-11, was transferred to another agency and on August 17, 1971, Mr. Humphries was assigned as project inspector and served in that capacity until completion of the project in November 1971. Mr. Peltz states that on another

project, valued at about \$1,000,000, one Arthur H. Fintel, project inspector, GS-11, sustained a heart attack which was fatal. On June 7, 1973, he says that Mr. Humphries, a GS-9 employee, was assigned as project inspector at the construction site and served in that capacity until June 1974.

In further support of his claim for a retroactive temporary promotion and backpay, Mr. Humphries states that he has copies of travel vouchers and travel orders which he can furnish to show the dates he was assigned to perform work at a higher-grade level and the grade levels at which such work was performed. He contends that he was denied promotions due to Indian preference rules.

We have held that employees who are detailed to higher-grade positions for more than 120 days without Civil Service Commission (now Office of Personnel Management) approval are entitled to retroactive temporary promotions with backpay for the period beginning with the 121st day of the details until the details are terminated. Everett Turner and David L. Caldwell, 55 Comp. Gen. 539 (1975) and Reconsideration of Everett Turner and David L. Caldwell, 56 Comp. Gen. 427 (1977). Federal Personnel Manual (FPM) Bulletin No. 300-40, May 25, 1977, was issued by the Civil Service Commission in order to provide additional information to assist agencies in the proper application of these decisions.

Paragraph 4 of the FPM Bulletin defines a detail as the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to his regular duties at the end of the detail. Paragraph 8F of the FPM Bulletin requires agencies, in accordance with FPM Supplement 296-31, Book II, Subchapter S3-13, to record details in excess of 30 calendar days on Standard Form 52 or other appropriate form and to file it on the permanent side of the employee's Official Personnel Folder. However, in the absence of this form of documentation, paragraph 8F further allows the employee to provide other forms of acceptable proof of his detail. Such acceptable documentation includes (1) copies of Standard Forms 50 or 52 or official memoranda of assignment (2) a written statement from the person who supervised the employee during the period in question, or other management official familiar with the work, certifying that to his or

her personal knowledge the employee performed the duties of the particular established, classified position for the period claimed, or (3) a decision under established grievance procedures.


The record before us does not contain acceptable documentation to prove that Mr. Humphries was officially detailed to perform work at the GS-11 and GS-12 grade levels. There are no official memoranda of assignment. The travel vouchers and travel orders to which the employee refers are not acceptable in determining whether he was in fact officially detailed to perform the duties of a higher-grade position during the period covered by his claim. Further, while the written statement of Mr. McNamara, a former supervisor, as well as the written statements of three former co-workers, show that from 1966 through August 1974, Mr. Humphries performed work at the GS-11 and GS-12 grade levels, such statements lack the requisite specificity to prove that the claimant performed the entire range of duties of the higher-grade positions and lack the dates showing the periods during which the claimed work was performed. Also, the record does not contain a decision under established grievance procedures which would serve as acceptable documentation of the official detail of the employee.

A detail does not occur merely through the performance by an employee of some of the duties of a higher-grade position but requires the detail or assignment of the employee to perform the entire range of duties of a particular higher-grade position. Duhart, B-196259, January 28, 1980, and Beach, B-195480, November 8, 1979. See also Tallent, B-195685, December 5, 1979, which is illustrative of a supervisor's statement which indicated that the employee had performed the duties of a specific higher-grade position during a specific period of time.

Claims presented to this Office for settlement are considered solely on basis of the written record. The burden of proof rests upon the claimant to establish the liability of the United States and his or her right to payment. 4 C. F. R. § 31.7. In the absence of sufficient documentation establishing that Mr. Humphries was officially detailed to perform the duties of the higher-grade positions and his performance of such duties during specific periods of time, there is no legal basis upon which his claim may be allowed.

B-194890

Accordingly, we sustain the settlement certificate dated March 16, 1979, issued by our Claims Division, which disallowed Mr. Humphries claim for retroactive temporary promotion and backpay.

A handwritten signature in cursive script that reads "Milton J. Forster".

For the Comptroller General
of the United States