



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

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B-179216

October 9, 1973

The Honorable  
The Secretary of the Army

Dear Mr. Secretary:

Transmitted herewith for appropriate administrative action is the claim of Mr. William J. Urbanek, a civilian employee of the Department of the Army, for retroactive promotion and salary differential between grades GS-12 and GS-13 for the period July 3, 1970, to August 28, 1972.

The record shows that as of July 3, 1970, Mr. Urbanek, a GS-12, was serving as the Deputy Director for Distribution and Transportation at Germersheim Army Depot, Germersheim, Germany. The position was coded GS-2001-12. On that date the position was administratively upgraded (reclassified) to GS-13. Mr. Urbanek had been in grade since March 1968 and the administrative report states that he was legally qualified for promotion to GS-13.

On August 26, 1970, a Request for Personnel Action, SF 52, was submitted by Mr. Urbanek's supervisor recommending him for promotion to GS-13. The request was approved by Mr. Urbanek's Commanding Officer but shortly thereafter the supervisor and Commanding Officer were reassigned and, for reasons uncertain from the record, the request was not processed. Mr. Urbanek's new supervisor submitted another SF 52, requesting temporary promotion. The new Commanding Officer disapproved the request, however, indicating that he preferred to seek permanent promotion at a later date. Shortly thereafter, the second supervisor was transferred. Mr. Urbanek's third supervisor submitted still another SF 52 on or about September 3, 1971, again requesting promotion to GS-13. Again, for reasons not disclosed by the record, no response was received.

From July 3, 1970, to his return to the continental United States on August 28, 1972, the record shows that Mr. Urbanek continued to fill the position of Deputy Director for Distribution and Transportation. Following his departure, the position was filled by a GS-13.

On August 3, 1972, Mr. Urbanek presented his claim to the U.S. Army Finance Center, Fort Benjamin Harrison, Indiana. The claim was forwarded to the National Personnel Records Center, St. Louis, Missouri, and from there transmitted to the Payroll Certifying Officer at Germersheim for processing in accordance with Army Regulation 37-105. The claim was

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subsequently returned to the Army Finance Center and, by letter dated November 13, 1972, the Heidelberg Area Civilian Personnel Officer, Headquarters, U.S. Forces Support District Baden-Wuerttemberg, confirmed Mr. Urbanek's contentions and indicated that the claim was considered valid. The Finance Center forwarded the claim to the General Accounting Office Claims Division on February 22, 1973.

It is well established that, when an agency reclassifies a position, to a higher grade, it must, within a reasonable time after the date of final position classification, either promote the incumbent if he is otherwise qualified or remove him. See B-165307, November 4, 1968; 48 Comp. Gen. 258 (1968); 37 Comp. Gen. 492 (1958). This is to be distinguished from the situation where an employee is detailed to a higher-grade position. In the latter situation, the employee is entitled to the compensation only of the grade to which he has been officially appointed. Where, on the other hand, as in the instant case, an agency upgrades a position, the retention of the incumbent in that position amounts to a determination by the agency that the incumbent is in fact qualified to perform the duty of the higher grade. Thus, as nothing in the record suggests that Mr. Urbanek was not qualified for promotion to GS-13, he should have been either promoted or removed within a reasonable time after his position was upgraded.

The only remaining question is what constitutes the "reasonable time" within which the agency must act with respect to the incumbent of the reclassified position. While our decisions have not defined the limits of what may be considered a reasonable time in this situation, we note that, under 5 CFR 511.701, a classification action by the Civil Service Commission must be placed into effect by the agency concerned not earlier than the date the agency receives the certificate and not later than the beginning of the fourth pay period following such receipt unless a subsequent date is stated therein. A similar time frame is prescribed in 5 CFR 511.702 for the effective date of classification actions resulting from classification appeals either to the agency concerned or to the Civil Service Commission, i.e., not later than the beginning of the fourth pay period following the date of the classification decision unless a subsequent date is stated therein. It is our view that a similar time frame should be applied in the instant case. Accordingly, we hold that the reasonable time within which Mr. Urbanek should have been either promoted or removed from the GS-13 position expired at the beginning of the fourth pay period after

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July 3, 1970, the date of the reclassification action, Cf. B-167234, July 8, 1969; B-167819(1), October 9, 1969. His promotion, therefore, should be made retroactive to a date not earlier than July 3, 1970, nor later than the beginning of the fourth pay period after July 3, 1970.

Sincerely yours,

Paul G. Dembling

For the

Comptroller General  
of the United States