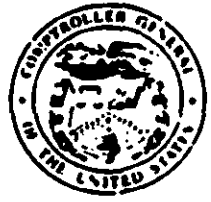


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DECISION



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

FILE: B-185766

DATE: November 17, 1977

MATTER OF: Nathan Lesowitz - Reconsideration of Settlement
Disallowing Retroactive Promotion and Backpay
for Extended Detail

DIGEST: Employee claimed a retroactive temporary promotion as a result of an overlong detail to a higher grade position under our Turner-Caldwell decision, 55 Comp. Gen. 539 (1975). Evidence originally submitted by claimant was found inadequate to support his claim because it failed to show: (1) employee performed duties of higher grade position; and (2) a definite termination date of detail. Evidence has now been submitted by claimant and his agency which conclusively establish these facts. Hence, GAO's November 28, 1975 settlement certificate is hereby rescinded and employee's claim may now be allowed.

This action responds to a request for review and reconsideration of our decision Matter of Nathan Lesowitz - Reconsideration of Settlement Disallowing Retroactive Promotion and Backpay for Extended Detail, B-185766, June 15, 1977. That decision disallowed Mr. Lesowitz's claim for a retroactive temporary promotion to grade GS-15, because he had failed to submit acceptable evidence showing that he actually performed the duties of the higher grade position. Likewise he had failed to furnish acceptable evidence establishing a definite termination date for his detail. Moreover, Mr. Lesowitz's former agency, the Department of Health, Education, and Welfare (HEW), was unable to recommend payment of his claim because of the paucity of evidence. The above-cited decision advised Mr. Lesowitz that additional evidence was required to support his claim.

Subsequently Mr. Lesowitz and HEW have submitted evidence which establishes that, while Mr. Lesowitz was a grade GS-14 Statistician, he was detailed to and performed the duties of the grade GS-15 position of Chief of Statistics and Studies, Social and Rehabilitation Service, HEW, from November 4, 1968, until July 1, 1971. On the basis of the additional evidence, HEW now recommends that the employee's claim be allowed.

Upon reconsideration, we conclude that the additional evidence presented supports Mr. Lesowitz's claim for a retroactive temporary

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promotion to grade GS-15 and backpay, on the basis of our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 Comp. Gen. 427 (1977). Accordingly, the employee's claim may be allowed for the period October 9, 1969, through June 30, 1971. As we stated in our decision of June 15, 1977, the portion of the claim that accrued prior to October 9, 1969, is barred by 31 U.S.C. § 71a, and may not be considered by this Office.

The settlement certificate issued by our Claims Division on November 28, 1975, that disallowed Mr. Lesowitz's claim is hereby rescinded and HEW is hereby authorized to settle Mr. Lesowitz's claim pursuant to guidance contained above.


Deputy Comptroller General
of the United States

UNITED STATES GOVERNMENT

John W. Dapton
GENERAL ACCOUNTING OFFICE *40*

Memorandum

TO : Director, Claims Division

November 17, 1977

FROM : Deputy
Comptroller General *Atkinson*

SUBJECT: Nathan Lesowitz - Reconsideration of Settlement Disallowing
Retroactive Promotion and Backpay for Extended Detail -
B-185766-O.M.

Our decision B-185766, of today, subject as above, rescinds your settlement certificate Z-2609977 of November 28, 1975, and authorizes the Department of Health, Education, and Welfare to allow the employee's claim subject to the guidance contained in the decision.

Attachment