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DECISION

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

FILE: B-186758

DATE: November 3, 1980

MATTER OF: Keith A. Baker - [Entitlement to Retroactive Promotion]

DIGEST: Civilian employee made claim for retroactive promotion and backpay on the basis that the position he was serving in was reclassified to higher-grade level on February 1, 1977, and that the administrative office failed to act timely. When position is reclassified to higher grade, agency must within reasonable time after the date of final position reclassification either promote the incumbent, if qualified, or remove him. Reasonable time expires at beginning of fourth pay period after reclassification. See 53 Comp. Gen. 216 (1973). Employee is entitled to be retroactively promoted to March 27, 1977, the beginning of the fourth pay period after February 1, 1977, and to receive backpay for the salary differential to April 10, 1977, when he received the promotion.

By letter of June 8, 1979, Thomas M. King, Director of the Division of Office of the Secretary Personnel, Department of Health, Education and Welfare (HEW), requested a decision as to whether an employee who received his promotion later than the date of reclassification of his position is entitled to a retroactive promotion and, if so, what the effective date of the promotion is. For the reasons that follow, the grievant is entitled to a retroactive promotion and that promotion is to be effective as of the beginning of the fourth pay period after the date of the position reclassification.

The question arose when Mr. Keith A. Baker, an employee of HEW, filed a grievance concerning the length of time it took the Personnel Office of the Office of the Secretary to process his promotion action. Ten months had passed between the time management originally submitted the request to promote Mr. Baker from a Social

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Science Analyst, GS-101-13, to a Social Science Analyst, GS-101-14, and the eventual promotion action. Although the position action request was processed as promptly as possible by the Personnel Office, it was delayed because the request was erroneously processed under the Office of the Secretary's Merit Promotion Plan.) The Merit Promotion Plan required posting the vacancy, followed by the selection of someone for the position. Mr. Baker was selected from the applicants for the position, and was promoted effective the first pay period after the selection was made, April 10, 1977. However, management's request for the promotion indicated that the promotion was to be achieved by reclassification due to the gradual assumption of duties by Mr. Baker. Mr. Baker's position had been reclassified on February 1, 1977, so he could have been promoted at that time as an exception to the Merit Promotion Plan.

The general rule in cases of this nature is that an employee of the Government is entitled only to the salary of the position to which actually appointed, regardless of the duties actually performed. When an employee performs duties normally performed in a higher-grade level, no entitlement to the salary of the higher grade exists until such time as the individual is actually promoted to that level. Cathy G. Pitts, B-195020, July 11, 1979.

There are, however, several exceptions to the general rule, one of which was the subject of decision 53 Comp. Gen. 216 (1973). We held that, (when a position has been reclassified to a higher grade, an agency must, within a reasonable time, either promote the incumbent, if qualified, or remove him. The retention of the incumbent in an upgraded position amounts to a determination by the agency that the incumbent is in fact qualified to perform the duty of the higher grade.) We further held that the reasonable time within which the incumbent should be either promoted or removed from his position expires at the beginning of the fourth pay period after the date of the reclassification action.

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Since Mr. Baker was the incumbent in the reclassified position and he was retained in that position, it indicates he is qualified to perform the duty of the higher grade. If he did not receive his promotion within a reasonable time, he is entitled to it being effected retroactively.)

(If the Personnel Office had not erred by processing the promotion action as a merit promotion action, Mr. Baker could have been promoted under Office of Personnel Management (OPM) regulations and HEW Instructions as early as the first pay period following the date of reclassification (February 13, 1977) or as late as the fourth pay period following that date (March 27, 1977). Under the authority of 53 Comp. Gen. 216, which relied on the OPM regulations for guidance, Mr. Baker is entitled to a retroactive promotion because he was not promoted until April 10, 1977, while the reasonable time frame for promotion expired March 27, 1977, the beginning of the fourth pay period after the date of reclassification. In the absence of agency regulations mandating an earlier date, we believe that Mr. Baker became entitled to a promotion at the beginning of the fourth pay period following the reclassification of his position. Therefore, the promotion should be effected retroactively to March 27, 1977, the beginning of the fourth pay period after the date of reclassification.

Under these circumstances, Mr. Baker's promotion may be made retroactive and he is entitled to backpay for the salary differential between grades GS-13 and GS-14 for the period between March 27 and April 10, 1977.

Milton J. Arosler

For the Comptroller General
of the United States