

DOCUMENT RESUME

02585 - [A1792817]

[Request for Reconsideration of Retroactive Promotion and Backpay]. B-187861. June 17, 1977. 2 pp.

Decision re: Gary K. Neller; by Milton Socolar (for Elmer B. Staats, Comptroller General).

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Veterans Administration: VA Hospital, Oklahoma City, OK.

Authority: Classification Act of 1949, as amended (5 U.S.C. 5101-5115). Back Pay Act (5 U.S.C. 5596). 5 C.F.R. 511.701. 5 C.F.R. 511.703. 55 Comp. Gen. 515. United States v. Testan, 424 U.S. 392 (1976).

The claimant requested reconsideration of a settlement disallowing his claim for a retroactive promotion and accompanying backpay for a period of alleged wrong classification. The claimant had no entitlement to either under civil service regulations. The Supreme Court held in United States v. Testan that neither the Classification Act nor the Back Pay Act creates a substantive right to backpay for a period of wrongful position classification. (Author/SC)

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DECISION



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

FILE: B-187861

DATE: June 17, 1977

MATTER OF: Gary K. Neller - Request for reconsideration
of retroactive promotion and backpay

DIGEST: Veterans Administration employee claims retroactive promotion and accompanying backpay for period of alleged wrongful classification. Claimant has no entitlement under civil service regulations and Supreme Court held in United States v. Testan, 424 U.S. 392 (1976) that neither Classification Act, 5 U.S.C. 5101-5115 (1970) nor the Back Pay Act, 5 U.S.C. 5596 (1970) creates substantive right to backpay for period of wrongful position classification.

By letter dated November 10, 1976, Mr. Gary K. Neller appealed Settlement Certificate No. 2-2622478, dated October 22, 1976, issued by our Claims Division which disallowed Mr. Neller's claim for a retroactive promotion and accompanying backpay.

The record shows that prior to his reclassification as a physician's assistant Mr. Neller, an employee of the Veterans Administration Hospital in Oklahoma City, Oklahoma, was classified as a health technician. Mr. Neller contends that since February of 1973 until his reclassification in 1976, he was performing the duties of a physician's assistant and he requests retroactive promotion and backpay in the amount of \$6,000 for the 3 year period prior to his reclassification.

The classification of positions in the General Schedule is governed by the Classification Act of 1949, as amended, now codified at 5 U.S.C. 5101-5115. Section 5115 empowers the Civil Service Commission to prescribe regulations regarding the classification of positions. The regulations of the Commission are at title 5 of the Code of Federal Regulations. Section 511.701, title 5 C.F.R. provides that the effective date of a classification action taken by an agency is the date the action is approved in the agency or subsequent date specifically stated. Section 511.702 provides that the effective date of a classification action upon appeal to the agency or the Commission, subject to the provisions of section 511.703, is no earlier than the date of the appeal and not later than the beginning of the fourth

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pay period following the date of the decision, except that a subsequent date may be specifically provided by the Commission. The sole provision for a retroactive effective date for classification is when there is a timely appeal which results in the reversal, in whole or part, of a downgrading or other classification action which had resulted in the reduction of pay. See 5 C.F.R. 511.703. Accordingly, the reclassification of a position may not be made retroactively other than as provided for in 5 C.F.R. 511.703. See Matter of Marion McCaleb, 55 Comp. Gen. 515 (1975).

In addition, the United States Supreme Court held in United States v. Testan, 424 U.S. 392 (1976) that neither the Classification Act nor the Back Pay Act, 5 U.S.C. 5595 (1970) creates a substantive right to back pay for periods of a wrongful position classification.

In view of the Testan case and since Mr. Neller does not qualify for retroactive promotion and back pay under civil service regulations, there is no authority which would allow his claim for back pay. Accordingly, we sustain the Certificate of Settlement issued October 22, 1976, which disallowed Mr. Neller's claim.

Shirley F. Austin

For The Comptroller General
of the United States