

DOCUMENT RESUME

03553 - [A2713915]

[Extended Detail to Schedule C Position]. B-189806. September 23, 1977. 3 pp. + enclosure (1 pp.).

Decision re: Leonard J. McEnnis, Jr., Federal Trade Commission; by Robert F. Keller, Deputy 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).

Authority: 5 C.F.R. 213.3334(h). 5 C.F.R. 213.3301(b). 55 Comp. Gen. 539. 56 Comp. Gen. 127. B-183086 (1977).

James A. Williams, Director, Division of Budget and Finance, Federal Trade Commission (FTC), requested an advance decision as to whether a retroactive temporary promotion may be granted to an employee who served in an acting capacity for an extended period in a schedule C position although an extension of the detail was not obtained. FTC had the authority to grant the employee a retroactive temporary promotion and backpay. (Author/SC)

3915

03553

DECISION



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

FILE: B-189806

DATE: September 23, 1977

MATTER OF: Leonard J. McEnnis, Jr. - Federal Trade Commission -
Extended Detail to Schedule C Position

DIGEST: Federal Trade Commission (FTC) questions whether it may grant a retroactive temporary promotion for an extended detail of a GS-14 competitive service employee to a GS-15 Schedule C position where an extension of the detail was not obtained. Since General Schedule position at grade GS-15 and below in both the competitive service and excepted service are covered by our Turner-Caldwell decision, 55 Comp. Gen. 539 (1975), FTC has authority to grant the employee a retroactive temporary promotion and backpay pursuant to the conditions set forth in that decision.

This action involves a request for an advance decision from Mr. James A. Williams, Director, Division of Budget and Finance, Federal Trade Commission (FTC), as to whether a retroactive temporary promotion authorized by our Turner-Caldwell decision, 55 Comp. Gen. 539 (1975), and our Reconsideration of Turner-Caldwell, decision, B-183086, March 23, 1977, 56 Comp. Gen. 427, may be granted to Mr. McEnnis, a grade GS-14 civilian employee in the competitive service, who served in an acting capacity for an extended period in a grade GS-15 Schedule C position in the excepted service.

On January 8, 1976, the grade GS-15 position, Director of Public Information, designated a Schedule C exception from the competitive service in 5 C.F.R. § 213.3334(b), became vacant by resignation of the incumbent. Mr. McEnnis, a grade GS-14 employee in the competitive service, was designated Acting Director by competent authority on January 12, 1976, and he served in that position until April 23, 1977, and performed the full range of duties of the higher grade position. No extension of the detail was ever obtained. The FTC questions whether it has authority to grant the retroactive temporary promotion with backpay claimed by Mr. McEnnis. In this connection, the record shows that the Civil Service Commission (CSC) authorized the continuation of the GS-15 position in the excepted service if it was filled by March 8, 1976.

B-189806

The position was not filled on a permanent basis by the specified date and FTC requested a 60-day extension to continue the exception on March 24, 1976. The record does not show whether the extension was granted by the Commission.

Our Turner-Caldwell line of decisions holds that employees detailed to higher grade positions for more than 120 days, without CSC approval, are entitled to retroactive temporary promotions with backpay for the period beginning with the 121st day of the detail until the detail is terminated. The rationale of those decisions is that an agency has no discretion to continue employee details beyond 120 days without CSC's approval. When an agency continues a detail without authority, corrective action in the form of a retroactive temporary promotion with backpay is required as of the 121st day of the detail, for the employee, provided the employee was otherwise qualified and could have been temporarily promoted into the position at that time.

The Commission has promulgated implementing guidance for our Turner-Caldwell line of decisions in CSC Bulletin No. 300-40 dated May 25, 1977, Subject: GAO Decision Awarding Backpay for Retroactive Temporary Promotions of Employees on Overlong Details to Higher Graded Jobs (B-183086). Paragraph 8B of CSC Bulletin No. 300-40 is relevant to the issue before us and provides as follows:

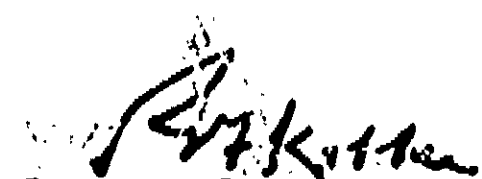
"B. Scope of Commission instruction. The Commission's instruction for securing prior approval for continuation of details beyond 120 days relates only to details within the same agency of employees serving in competitive positions and, in the excepted service, positions under the General Schedule. Since the GAO decision follows the Commission's instruction, it would not apply to positions beyond that scope, e.g., Postal Service jobs."

Inasmuch as the Schedule C position here involved was in the excepted service under the General Schedule, our Turner-Caldwell line of decisions would be apposite. However, the record indicates there is a question whether the GS-15 position was in the excepted service because there is no evidence of CSC approval of FTC's request to continue the excepted status of the position. In this connection, 5 C.F.R. § 213.3301b states that the exception from

B-189806

the competitive service for certain Schedule C positions, including the position involved here, is revoked when the position has been vacant for 60 calendar days or more. When the exception is revoked, the position merely reverts to the competitive service. Accordingly, the revocation would not have effected Mr. McEnnis' entitlement to a retroactive temporary promotion with backpay since General Schedule positions at GS-15 and below of both the competitive service and excepted service are covered by our Turner-Caldwell decision.

Consequently, FTC has authority to grant Mr. McEnnis retroactive temporary promotion to grade GS-15 for the period indicated above. Backpay should be computed in accordance with instructions contained in 5 C.F.R. Part 550, subpart H.


Deputy Comptroller General
of the United States

UNITED STATES GOVERNMENT

Memorandum

Johnnie Lupton
CP
GENERAL ACCOUNTING OFFICE

September 23, 1977

TO : Director, Claims Division

Deputy
FROM : Comptroller General *W. K. ...*

SUBJECT: Claim of Leonard J. McEnnis, Jr. - B-189806-O.M.

Returned herewith is file 2-2714843-384 forwarded here by your memorandum of August 4, 1977. Pursuant to the agency request we have rendered a decision today, copy attached. Accordingly, your file should be closed.

Attachments