

6132

DECISION



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

J. Botsford
CP

FILE: B-190174

DATE: April 21, 1978

MATTER OF: Mary Lee Groover - Retroactive Promotion and Backpay

DIGEST: Employee was detailed from GS-4 position to GS-6 position for more than 120 days. She is entitled to retroactive temporary promotion to GS-5 on 121st day of detail. She is not entitled to temporary promotion to GS-6 since she did not complete 1 year of service after constructive promotion to GS-5. B-189690, February 16, 1978, modified.

This decision is in response to an appeal by Mary Lee Groover from Settlement Certificate No. Z-2726012 by which our Claims Division denied her claim for retroactive promotion and backpay.

The record shows that Ms. Groover, a former employee of the Department of the Air Force, was detailed from the position of Supply Clerk RSS-863, GS-4 to the position of Supervisory Supply Clerk RSS-910, GS-6, effective July 1, 1974. The detail was not supposed to last beyond August 29, 1974, but Ms. Groover continued to perform the duties of the higher grade position until her retirement on July 11, 1975. Although she was not officially detailed until July 1, 1974, Ms. Groover is claiming entitlement to retroactive promotion and backpay from April 11, 1973. She claims that she performed the duties of the GS-6 position from that date due to the absence of her supervisor who had been informally detailed to another position.

Ms. Groover based her claim on Matter of Everett Turner and David L. Caldwell, 55 Comp. Gen. 539 (1975), and Matter of Marie Grant, 55 Comp. Gen. 785 (1976). In the former decision we held that employees detailed to higher grade positions beyond 120 days without prior Civil Service Commission approval were entitled to temporary retroactive promotions with backpay. In the latter decision, we ruled that the Turner-Caldwell decision applied retroactively to extended details to high grade positions, subject only to the time limitation in filing claims imposed by 31 U.S.C. 71a.

We affirmed our holdings in Turner-Caldwell and Marie Grant in Matter of Reconsideration of Everett Turner and David L. Caldwell, 56 Comp. Gen. 427 (1977) and stated:

"Accordingly, we adhere to the view that under the detail provisions of the FPM, (Federal Personnel Manual) an agency head's discretion to make a detail to a higher grade position lasts no longer than 120 days, unless proper administrative procedures for extending the detail are followed. We further affirm that a violation of these provisions is an unjustified or unwarranted personnel action under the Back Pay Act, 5 U.S.C. 5596 (1970), for which the corrective action is a retroactive temporary promotion and backpay, as set forth in our decision 55 Comp. Gen. 539, supra. It is necessary, however, that the employee satisfy the requirements for a retroactive temporary promotion. In this connection, certain statutory and regulatory requirements could affect the entitlements of an employee otherwise qualified for corrective action as a result of an improper extended detail. For example, an employee improperly detailed for an extended period, who fails to meet the time in grade requirements of the 'Whitten Amendment,' 5 U.S.C. 3101, note, would not become entitled to a retroactive temporary promotion until such time in grade requirements were satisfied. See 55 Comp. Gen. 539, 543."

The Whitten Amendment, 5 U.S.C. 3101, note, provides in pertinent part as follows:

"(c) The Civil Service Commission shall make full use of its authority to prevent excessively rapid promotions in the competitive civil service and to require correction of improper allocations to higher grades of positions subject to the Classification Act of 1949, as amended. No person in any executive department or agency whose position is subject to the Classification Act of 1949, as amended, shall be promoted or transferred to a higher grade subject to such Act without having served at least one year in the next lower grade."
(Emphasis supplied.)

The above-quoted provision generally requires that an employee serve 1 year in the next lower grade before he is eligible for either a

B-190174

temporary or permanent promotion. Our Claims Division denied Ms. Groover's claim for a retroactive promotion and backpay because she was detailed from a GS-4 position to a GS-6 position without being appointed to and serving a year in a GS-5 position.

However, in a recent decision, Matter of Sam Friedman, Edwin C. Baker, and Russell A. Homes, Jr. - Claims for Backpay, B-189690, February 16, 1978, we stated the following:

"For the purpose of implementing the remedy provided for overlong details to higher grade jobs by our Turner-Caldwell decisions, we shall treat an employee who is detailed to a position more than one grade above his prior position in the same way we would treat an employee who has been detailed upward only one grade. Therefore, an employee, who is detailed two or more grades above his regular grade, is entitled to a retroactive temporary promotion to the highest grade to which he could have been promoted under the Whitten Amendment and other applicable requirements."

In that decision, one of the employees, Russell A. Holmes, Jr., was detailed from a GS-13 position to a GS-15 position from June 21, 1971, to May 18, 1973. We stated that he was entitled to a retroactive temporary promotion to GS-14 beginning on the 121st day of his detail and was further entitled to a retroactive temporary promotion to GS-15 beginning 1 year after the detail started.

The Civil Service Commission has informally advised us that it does not consider time spent on detail prior to a temporary promotion to be time in grade for purposes of the application of the Whitten Amendment. Thus, Mr. Holmes should not have been considered temporarily promoted to GS-15 until 1 year and 120 days after the beginning of his detail to the higher grade position. Therefore, our Friedman, Baker, and Holmes decision is hereby modified prospectively.

In accordance with the above, Ms. Groover is entitled to a retroactive promotion to GS-5 beginning on the 121st day of her assignment to the position of Supervisory Supply Clerk. However, since she retired on July 11, 1975, and did not serve 1 year after the constructive temporary promotion to GS-5, she is not entitled to a retroactive temporary promotion to GS-6.

B-190174

Although Ms. Groover is claiming retroactive promotion and backpay from April 11, 1973, she has not submitted any evidence which shows that she performed the duties of the position of Supervisory Supply Clerk from that time. Section 31.7, title 4 of the Code of Federal Regulations, provides in part that the burden is on claimants to establish the liability of the United States, and the claimants' right to payment.

Since Ms. Groover has not established her entitlement to relief from April 11, 1973, she may only be granted retroactive promotion and backpay beginning on the 121st day after July 1, 1974, the effective date of her official detail.

In accordance with the above a settlement will be issued in due course.

R. F. Kim
Acting Comptroller General
of the United States



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

J. Botsford CP

B-190174

April 21, 1978

The Honorable Lawton Chiles
United States Senator
Federal Building
Lakeland, Florida 33801

Dear Senator Chiles:

This is in response to your letters of October 17, 1977, and January 23, 1978, reference 16a/Mary Lee Groover, Tampa, Florida.

By decision of today, copies enclosed, we held that Ms. Groover's claim for temporary retroactive promotion and backpay may not be allowed for the full amount claimed since she had not met the service requirements of the Whitten Amendment for a temporary promotion to GS-6 on the 121st day of her detail to that position from GS-4. However, we have allowed a temporary promotion and backpay to GS-5 from the 121st day of her detail until the date of her retirement.

In accordance with your request we are returning the enclosure with your letter.

Sincerely yours,

Acting

R. J. Kistner
Comptroller General
of the United States

Enclosures

UNITED STATES GOVERNMENT

J. Botsford
GENERAL ACCOUNTING OFFICE CP

Memorandum

TO : Director, Claims Division

April 21, 1978

Acting
FROM : Comptroller General

R. F. K. 114

SUBJECT: Claim for Temporary Promotion and Backpay - B-190174-O.M.

Returned herewith is file Z-2726012 for processing in accordance with decision B-190174, dated today, copy attached.

Attachments