

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548***[Claim for Time-In-Grade Credit #7672]*

FILE: B-191386

DATE: April 6, 1981

MATTER OF: Andrew C. Hau - Retroactive temporary promotion - time-in-grade requirements

- DIGEST:**
1. Employee claims time-in-grade credit for first 120 days of a detail to a higher-grade position for which he was awarded a retroactive temporary promotion. The first 120 days of a detail to a higher-grade position are not to be counted as part of the time-in-grade requirement of the Whitten Amendment.
 2. Retroactive temporary promotion from GS-7 to GS-9 is denied, since there is no evidence that employee performed all the principal duties of an established and classified position at the GS-9 level.

This decision concerns the retroactive temporary promotion of Mr. Andrew C. Hau, a civilian employee of the Sacramento Air Logistics Center (AFLC), McClellan Air Force Base, California. Our Claims Group by letter of May 20, 1980 (Z-2630950), advised the Air Force that, because of his details to higher-level positions, Mr. Hau should receive backpay at the GS-5 level beginning June 21, 1970, the 121st day of his initial detail, and at the GS-7 level 1 year after that date.

ISSUES

Mr. Hau now raises three new issues. He believes he is entitled to grade GS-7 pay at least from February 1971, because the first 120 days of his detail to the GS-5 position should be counted toward his fulfilling the required 1 year of service at that level to be eligible for grade GS-7. Also, he believes that he should receive backpay as a GS-7 after serving only 6 months,

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rather than 1 year, as a GS-5 trainee. Finally, he states that because of experience and class standing (upper third of his engineering class), as well as the higher level duties he was assigned, he is entitled to a retroactive temporary promotion and backpay at the GS-7 level beginning June 2, 1970, (the 121st day of his detail) and a subsequent retroactive temporary promotion with backpay as a GS-9 beginning alternatively on February 2, 1971; August 25, 1971; or September 22, 1971. His claims for backpay would end April 23, 1972, when he was promoted to grade GS-9.

FACTS

During the period Mr. Hau was temporarily detailed to higher-level GS-5/7 positions, he originally received pay only for his permanent position of GS-4, Engineering Aid, from February 21, 1970, until September 1971. Then he was promoted to GS-5, Electronics Engineer, the grade at which he continued to be paid until his GS-9 promotion on April 23, 1972. His supervisor, Robert P. Green, Space Surveillance and Guidance Section, Engineering Division, stated by memorandum of August 25, 1971, that after Mr. Hau graduated in the upper-third of his graduating class in Electrical Engineering in January 1970, efforts to promote Mr. Hau to a GS-7 failed because of manpower cutbacks in the Service Engineering Division. However, according to Mr. Green, he had functioned as an Electronics Engineer for the 18 months preceding the August 25 memorandum, including 12 months at grade GS-7.

By letter to us of February 8, 1980, Mr. Waldeman V. Moehring, Chief Staffing Section, Personnel Division, AFLC, reported to us that although organizational charts or personnel transactions were no longer available to show the grade structure of engineering positions in Mr. Hau's work unit, it was the practice to establish Electronic Engineering training positions and that it could be assumed such positions at grade GS-5 and GS-7 had been established in Mr. Hau's unit.

CONCLUSIONS

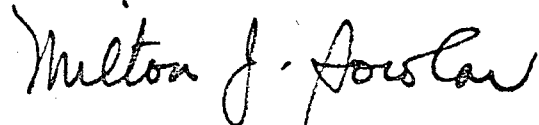
The issues raised by Mr. Hau are resolved as follows. The first 120 days of his detail as a GS-5 may not be counted as part of the waiting period for a retroactive temporary promotion to grade GS-7. The Office of Personnel Management has advised us that it does not consider time spent on detail prior to a temporary promotion to be time in grade for purposes of satisfying the Whitten Amendment. We so held in Mary Lee Groover, B-190174, April 21, 1978.

At the time in question, a waiting period of 1 year served in the next lower grade was generally required for a promotion by the Whitten Amendment, section 1310 of the act of November 1, 1951, ch. 664, Chapter XIII, 65 stat. 47, as amended, 5 U.S.C. § 3101, note. The Whitten Amendment had several exceptions to the 1-year service requirement, whereby promotions of two grades in 1 year were permitted, including promotions to positions in the same line of work when the employee had completed a training period under an approved training program.

We lack specific information that Mr. Hau was in an approved training program when his permanent position was at grade GS-4 and he was detailed to serve in GS-5/7 positions beginning February 21, 1970. However, if he did meet the training exception of the Whitten Amendment, he was ineligible for a three-grade promotion from GS-4 to GS-7 in 1 year under the training-period exception limiting promotions to two grades annually. Further, there is nothing in our records showing that any of the other exceptions to the Whitten Amendment applied. Consequently, we find Mr. Hau was first entitled to GS-7 backpay 1 year after his retroactive temporary promotion to GS-5 on June 21, 1970.

Concerning his claim for a retroactive temporary promotion to grade GS-9, we have no information that Mr. Hau was detailed to perform all of the principal duties and responsibilities of an established, classified GS-9 position prior to his permanent promotion to that position. Therefore, we have no reason to believe he is entitled to backpay at that grade level. See 57 Comp. Gen. 536 (1978); 57 Comp. Gen. 767 (1978). Mr. Hau's assertion is that he was qualified as a GS-9 and perhaps should have been promoted to that grade before April 23, 1972. However, the rule in such cases is that the employee is entitled only to the pay of the position to which he has been appointed until authorized officials exercise their discretionary authority to promote. See 21 Comp. Gen. 95 (1941); 40 id. 207 (1960).

Accordingly, we have no basis to allow Mr. Hau's claim for additional backpay and our Claims Group's settlement of May 20, 1980, is sustained.



Acting Comptroller General
of the United States