

DOCUMENT RESUME

08022 - [C3408525]

[Reconsideration of Claim for Backpay for Detail to Higher-Graded Position and for Leave]. B-192433. December 4, 1978. 5 pp.

Decision re: Sanford M. Altschul; by Robert F. Keller, Deputy Comptroller General.

Contact: Office of the General Counsel: Personnel Law Matters II.

Organization Concerned: Department of Housing and Urban Development.

Authority: 5 C.F.R. 713. 5 C.F.R. 752. 56 Comp. Gen. 427. 56 Comp. Gen. 761. F.P.M. Bulletin 300-40. B-187287 (1977). B-190335 (1978). B-191413 (1978). B-182695 (1975).

A former Federal employee requested reconsideration of a settlement which disallowed his claim for backpay for an alleged detail to a higher-grade level position and for backpay for time charged him as leave without pay and absence without leave. The claim for backpay for the hours charged to the leave status was not considered due to the lack of any evidence save the employee's assertion that he was not absent from work. The assignment of one of many duties normally assigned to employees at a higher-grade level constitutes, at most, an accretion of duties in the position occupied and involved proper classification of positions. Such action does not qualify for payment for an overlong detail to the higher-grade position. (Author/SC)

**DECISION**

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

*8525*

FILE: B-192433

DATE: December 4, 1978

MATTER OF: Sanford M. Altschul - Backpay for Detail

- DIGEST:
1. Where one of the grounds for separating an employee was his leave without pay and absence without leave status, the employee's claim for payment for the hours charged to such leave status would have been appropriate in connection with the appeal of the separation action. The Comptroller General declines to consider the employee's entitlement to pay for period during which such leave was charged based on his assertion that he was not absent from work.
  2. Where an employee presents evidence of his assignment to one of many duties normally assigned to employees at a higher-grade level, (here is, at most, an accretion of duties in the position occupied. The accretion of duties is a matter involving the proper classification of positions and does not qualify for payment for an overlong detail to a higher-grade position.

This decision is in response to the request of Mr. Sanford M. Altschul for reconsideration, of our Claims Division settlement, Z-2787765, May 3, 1978, which disallowed his claim for backpay for an alleged detail to a higher-grade position, and for backpay for 495 hours charged him as leave without pay (LWOP) and absence without leave (AWOL), during the period April 23 to September 10, 1977. In his request for reconsideration Mr. Altschul increases his second claim to 543 hours by extending the relevant period to September 24, 1977, the date he was separated from the Department of Housing and Urban Development (HUD).

We will deal first with Mr. Altschul's claim for payment for the 543 hours he was placed on LWOP or AWOL. Included in the materials provided to us by Mr. Altschul is a copy of a memorandum dated September 13, 1977, addressed to him from Mr. Elmer C. Binford, of the HUD Chicago Area Office. The subject of the memorandum is "Decision on Proposal to Remove."

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In the memorandum Mr. Altschul is advised that he is being removed from his position effective September 23, 1977. One of the grounds upon which the removal was premised was AWOL. The memorandum advises Mr. Altschul of his right to appeal his removal to the Federal Employee Appeals Authority, or to appeal his removal as discriminatory under 5 C.F.R. Part 713. The record also contains a letter dated December 2, 1977, addressed to Mr. Altschul from Ms. Virginia M. Armstrong, Director of Personnel of HUD. That letter advises Mr. Altschul that, since AWOL was one of the grounds for his removal, it cannot be separated from that action and should be pursued as part of his appeal of his removal.

In his claim for payment for 543 hours of LWOP and AWOL, to this Office, Mr. Altschul has submitted no evidence in support of his claim other than his own uncorroborated statement that he was in fact working during those hours. Absence without leave was a partial basis for Mr. Altschul's removal, and if that removal is contested, the employee's rights are governed by either 5 C.F.R. Part 713 or Part 752. An appeal under either of those procedures would result in a hearing at which the basic facts relating to the AWOL and LWOP charges would be developed. Under the circumstances there is no basis for a determination by us that Mr. Altschul is entitled to be paid for the 543 hours of LWOP and AWOL charged. Therefore, we must sustain our Claims Division's disallowance of that portion of his claim.

The remainder of Mr. Altschul's claim is for backpay for an overlong detail to a higher-grade position, based upon our decision Matter of Reconsideration of Turner-Caldwell, 56 Comp. Gen. 427 (1977). In his original claim filed with HUD, Mr. Altschul stated the period of his claim as June 10, 1975 (120 days after February 10, 1975), to the date his claim was filed with HUD, May 9, 1977. In his request for reconsideration, he states that the period of his claim should begin on December 13, 1972, based upon a memorandum which refers to him as "Assistant Contracting Officer." In his original claim, Mr. Altschul does not claim a detail to a particular grade, he merely states that the grades in the Contract Specialization run from grade GS-5 to grade GS-15. In his request for reconsideration, he seems to have adopted grade GS-13 as the one to which he was detailed.

In early 1975, Mr. Altschul was an employee of the Chicago Area Office of HUD. He was officially appointed to and held the

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position of Contract Specialist, grade GS-1102-9. The only document that we can find in the record that might be construed as detailing Mr. Altschul to any other position is a memorandum dated February 21, 1975, which stated that:

"Effective February 10, 1975, we have authorized the delegation of authority as Contracting Officer to Mr. Sanford Altschul, replacing Miss Evelyn W. Clark.

"Please take the appropriate action necessary to have this redelegation of authority published in the Federal Register."

At that time Ms. Evelyn W. Clark held the position of Realty Specialist, grade GS-9. We have also been advised that Ms. Clark had been delegated duties as a Contracting Officer previously, and that a statement had been published in the Federal Register documenting that delegation, which was stated to be effective as of November 15, 1973. There is no evidence in the record, and we have been advised that HUD has been unable to find any such evidence, to indicate the delegation of contracting authority to Mr. Altschul was ever published in the Federal Register.

In its report on this claim HUD states that Mr. John Davis, who was Mr. Altschul's supervisor from May 1975 to Mr. Altschul's termination, was not aware of the February memorandum, did not observe Mr. Altschul perform duties above the grade GS-9 level, and had not authorized Mr. Altschul to sign documents as a Contracting Officer. Mr. Davis states that the documents should have been submitted to him for signature as Contracting Officer.

We do not consider the fact that Mr. Davis was unaware of the February memorandum to be dispositive of the issues. Additionally, whether or not he had authority to do so, Mr. Altschul signed numerous documents and contracts as "Contracting Officer." Parenthetically, if there is any question as to Mr. Altschul's authority to act as Contracting Officer, HUD may wish to ascertain whether there are any contracts signed by Mr. Altschul that have not been completely performed, and ratify those contracts. See 56 Comp. Gen. 761 (1977).

Civil Service Commission, Federal Personnel Manual Bulletin 300-40, dated May 25, 1977, which was issued to assist agencies

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in dealing with backpay claims in "detail" cases, states in paragraph 4 that, in order to recover backpay, the position to which an employee is detailed "must be an established one, classified under an occupational standard to a grade or pay level." We have agreed with and adopted this rule, Matter of Hubert J. Buteau, B-187287, May 13, 1977, and Matter of Katherine Crump-Wiesner, B-190335, February 14, 1978. When the February 21, 1975 memorandum was issued, in effect, delegating to Mr. Altschul whatever duties as a Contracting Officer Mr. Evelyn W. Clark may have had at that time, Ms. Clark was a grade GS-9, the same grade as held by Mr. Altschul. Without some other evidence that higher-graded duties were performed by Mr. Altschul, his claim must fail since his detail or reassignment was at his own grade level, GS-9.

We requested and received copies of the position descriptions for all the professional positions in Mr. Altschul's section. There are contract specialist positions in the 1102 classification series classified at grades GS-9, GS-11, and GS-12. The head of the section, Mr. John Davis' position was classified as Realty Officer, grade GS-1170-13. The provisions of the GS-9, GS-11, and GS-12 position descriptions all require the incumbent in that position to obtain clearance from the Chief Property Officer (CPO) before making contract awards. The record also contains a memorandum dated November 11, 1976, from Mr. Davis to "All Contracting Staff," on the subject of staff assignments. For both Ms. Clark (who had been promoted to grade GS-11 in June 1976), and Mr. Altschul it lists as one duty "Awarding of Contracts for CPO signature."

We have also examined the Civil Service Commission Position-Classification Standards for the GS-1102 Contract and Procurement Series. These standards do not describe a position specifically as a "contracting officer." The positions at the GS-9, GS-11, GS-12, and GS-13 levels are entitled: contract negotiator; contract administrator; contract termination specialist; and contract specialist. What Mr. Altschul seems to identify as the crucial or pivotal distinction that qualifies him for backpay for a detail to a higher-graded position is final contract signature authority. A review of the position-classification standards shows that signature authority is only one of many duties that are to be performed by an employee serving in that series of positions. Mr. Altschul has presented no evidence to show how the duties he performed were typical of the duties performed by a contract specialist above the grade GS-9 level.

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The title of "contracting officer" appears to be a functional title rather than a position-classification title, and as such, does not seem to carry with it any particular grade. The grade of a particular position is, instead, dependent upon the nature and complexity of the contracts administered in that position.

At the very most, Mr. Altschul may have been assigned or been allowed to act as a contracting officer for the purpose of signing contracts on behalf of the United States. As such he may have performed some of the duties of a higher-grade position while he was serving in a grade GS-9 position. Even this, however, is not clear because the policies of the office in which he worked regarding the delegation of contracting officer authority are not clear. In any case we have held that when a position undergoes an accretion of duties, i. e., some higher-level duties are assigned, that does not constitute a detail to a higher-grade position and does not justify a retroactive promotion and concomitant backpay. The employee's proper remedy is to seek to have the classification of his position upgraded. Matter of Patrick J. Fleming, B-191413, May 22, 1978. Mr. Altschul seems to indicate that he attempted to have his position reclassified without success. This Office does not have jurisdiction to reclassify positions, that authority is solely within the discretion of the Civil Service Commission. Matter of Edward Rothenberg, B-187234, December 8, 1976, and Matter of Horace M. Thorne, B-182695, September 15, 1975.

Accordingly, the disallowance of Mr. Altschul's claim for backpay for an allegedly overlong detail to a higher-graded position and for payment for leave, is sustained.

  
Deputy Comptroller General  
of the United States