

**DOCUMENT RESUME**

08038 - [C3528621]

[Claim for Additional Compensation because of Allegedly  
Erroneous Classification of Position]. B-192560. December 14,  
1978. 2 pp.

Decision re: George W. Moller; by Robert F. Keller, Deputy  
Comptroller General.

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

Organization Concerned: General Services Administration.  
Authority: Back Pay Act of 1966 (5 U.S.C. 5596). Classification  
Act of 1949 (5 U.S.C. 5101). 52 Comp. Gen. 631. 5 C.F.R.  
511. United States v. Testan, 424 U.S. 392 (1976).

An employee appealed the denial of his claim for a  
retroactive promotion and backpay for a period of allegedly  
erroneous classification of his position. Although the position  
was reclassified to a higher grade, the employee's entitlement  
to the compensation of that grade did not begin until he was  
promoted. (HTW)

**DECISION**

*John Mitchell*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20048

*Plate*  
**8621**

**FILE:** B-192560

**DATE:** December 14, 1978

**MATTER OF:** George W. Noller

**DIGEST:** Employee of the General Services Administration claiming retroactive promotion and backpay for period of alleged erroneous classification and delays in having position reclassified, is not entitled to payment. General rule is that even though position is reclassified to a higher grade employee's entitlement does not commence until he is actually promoted to that grade and neither Classification Act, 5 U.S.C. 5101-5115, nor Back Pay Act, 5 U.S.C. 5596, create substantive right to backpay for period of erroneous classification. United States v. Testan, 424 U.S. 392 (1976).

This action is the result of an appeal by Mr. George W. Noller to a settlement by our Claims Division dated May 17, 1978, in which his claim for additional compensation incident to the reclassification of his position was denied.

Mr. Noller was appointed to the position of Structural Engineer, GS-11, with the General Services Administration on March 2, 1964. On October 5, 1969, Mr. Noller was promoted to General Engineer, GS-12. Apparently, the Structural Engineer position, GS-11, was reclassified to a General Engineer position, GS-12. It is his contention that the position to which he was initially appointed should have been classified as a GS-12 position and that his supervisor believed this to be the case. He also indicates that the reclassification and his promotion would have been accomplished at an earlier date if were not for the inadequate position descriptions submitted and the delays caused by management personnel in processing an adequate position description justifying a reclassification to the GS-12 position.

It is well established that Federal Government employees are entitled only to the salaries of the positions to which they are appointed regardless of the duties they actually perform. Thus, even if a position to which an employee is appointed is subsequently reclassified to a position of higher grade, entitlement to the pay of the higher grade does not commence until the employee is actually promoted to the higher grade. See 52 Comp. Gen. 631 (1973) and court cases cited therein.

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The classification of positions in the General Schedule is governed by 5 U.S.C. 5101-5115. Section 5115 empowers the Civil Service Commission to prescribe regulations regarding the classification of positions. Under the Commission's regulations the only provisions for a retroactive effective date for classification is when there is a timely appeal which results in the reversal, in whole or in part, of a downgrading or other classification action which had resulted in the reduction of pay. See 5 C.F.R. 511.703 (1969).

Furthermore, in United States v. Testan, et al., 424 U.S. 392 (1976), the United States Supreme Court held that neither the Classification Act nor the Back Pay Act, 5 U.S.C. 5596, creates a substantive right to backpay for periods of wrongful position classification. In view of this, Mr. Noller is not entitled to additional compensation as a result of any erroneous classification of his position during the period in question.

Accordingly, the settlement of the Claims Division denying Mr. Noller's claim is sustained.

Deputy

  
Comptroller General  
of the United States