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**DECISION**

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

FILE: B-192684 DATE: November 19, 1979

MATTER OF: Lawrence J. Ponce *[Entitlement to]* Quality Step Increase and Retroactive Temporary Promotion

**DIGEST:** There was no inconsistency between awarding quality step increase (QSI) for GS-11 work while the employee was detailed to a GS-12 position and later granting a retroactive temporary promotion for the detail. Once granted, employee had vested right to QSI, since it did not violate any statute or regulation. Consequently, the employee is entitled to both QSI and retroactive temporary promotion. 5 U. S. C. § 5336; 5 C. F. R. §§ 531.411-412; Army Regulation 672-20.

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By letter dated June 8, 1979, Charles W. Weatherholt, Acting Director of Civilian Personnel, Department of the Army, has appealed the Claims Division's allowance of both a quality step increase (QSI) and a retroactive temporary promotion for a detail to a higher-grade position to Lawrence J. Ponce. The employing agency, the U. S. Army Materiel Development and Readiness Command (DARCOM), Automated Logistics Management Systems Agency (Agency), St. Louis, Missouri, informed Mr. Ponce on June 22, 1978, that he may have one but not both of these benefits. Our Claims Division allowed the employee's claim to both benefits by letter of March 27, 1979, to the U. S. Army Finance and Accounting Center.

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**ISSUE**

The issue is whether Mr. Ponce, who received a QSI as a GS-11 while serving in a GS-12 position to which he was detailed, should now be allowed to retain the QSI and to also receive a retroactive temporary promotion granted to him for the same detail.

**FACTS**

On January 24, 1971, Mr. Ponce was reassigned to the Director's Office of the Agency's Materiel Management Directorate.

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Before and immediately after the reassignment he was designated and paid as a Program Analyst, GS-11, occupation code GS-0345-11. However, by a Request for Personnel Action (SF-52), initiated by Mr. Ponce's supervisor on April 15, 1971, and by the Agency's job classification procedure, the position to which he was reassigned was converted and officially established at grade GS-12 under the same occupation code.

Mr. Ponce was not promoted to the GS-12 grade level, but he was nevertheless assigned to perform the duties of the higher-level position on June 30, 1971. Mr. Ponce's supervisor, the Director of the Materiel Management Directorate, requested a promotion for Mr. Ponce by an entry in section 1 of a Position Review and Group Action Request List (DA Form 279), dated June 30, 1971. But the Agency's Personnel Office suspended action on request by noting on this document:

"To be effected on S.F. 52 No. 71-295 action suspended - incumbency may be effected at later date."

Despite the possibility of a future promotion left open by this notation, Mr. Ponce remained at grade GS-11 during the entire period of 36 months he was assigned to the GS-12 Program Analyst position in the Materiel Management Directorate.

A quality step increase was awarded to Mr. Ponce on October 5, 1972, on the recommendation of his supervisor. In item 5b of DA Form 1256, Mr. Ponce's supervisor entered the dates from October 1, 1971, to October 1, 1972, as the period of performance on which the QSI was based. In his narrative statement in support of the award, the supervisor observed that there was no reason to believe that Mr. Ponce would not continue his high-level performance in the future. Since Mr. Ponce had not been promoted to grade GS-12, the QSI raised him to step 9 at grade GS-11, effective October 15, 1972.

By memorandum of October 16, 1973, an Executive Assistant of the Agency advised the Personnel Officer that two GS-11 Program Analysts serving in GS-12 positions, including Mr. Ponce, should be "reassigned in accordance with normal reduction in force proceedings to clarify these misassignments." However, Mr. Ponce continued to serve in the position of Program Analyst, GS-12, in the Materiel Management Directorate through June 30, 1974, when he was reassigned to another office.

On April 6, 1977, Mr. Ponce filed a claim for a retroactive temporary promotion with our Claims Division under our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 Comp. Gen. 427 (1977), which under certain conditions, permitted backpay for details of more than 120 days to higher-grade positions. The Claims Division transferred the claim to the Department of the Army. On December 29, 1977, the Agency's investigator submitted his findings and recommended a retroactive temporary promotion, effective as of October 28, 1971, which was the 121st day after Mr. Ponce was assigned the duties of the GS-12 position established in the office of the Agency's Materiel Management Directorate, and ending upon his reassignment from that position on June 30, 1974. The Agency's Personnel Officer gave final approval for the retroactive temporary promotion on February 9, 1978.

However, the Agency's parent organization, Development and Readiness Command, Alexandria, Virginia, advised the Agency on May 11, 1978, that Mr. Ponce would have to relinquish either the QSI he had received on October 5, 1972, or the retroactive temporary promotion. DARCOM said that a QSI or a sustained superior performance award for a period of time later approved for retroactive temporary promotion must be cancelled since they would not meet the requirements of Army Regulation 672-20, particularly paragraph 9-1c. DARCOM believed that the intent of these awards was to recognize high quality work in the employee's "official position of record" at the time of the award. DARCOM further advised that if Mr. Ponce withdrew his claim for temporary promotion to a grade GS-12, DARCOM would consider that Mr. Ponce properly received the QSI for work as a GS-11 rather than for the GS-12 duties of the position to which he had been assigned.

On June 22, 1978, the Agency advised Mr. Ponce by letter that if he pursued his claim for backpay, the QSI would be cancelled and that he would owe the U.S. Government \$240.41. However, if he withdrew his claim, no action to cancel the QSI would be necessary. After being informed that he could have one but not both of these benefits, Mr. Ponce appealed to our Claims Division.

#### DISCUSSION

The applicable statute, 5 U.S.C. § 5336, provides that:

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"\* \* \*[U]nder regulations prescribed by the Civil Service Commission, the head of each agency may grant additional step increases in recognition of high quality performance above that ordinarily found in the type of position concerned."

Executive Order 11073, January 2, 1963, in effect when Mr. Ponce received the QSI (currently, Executive Order 11721, May 23, 1973) directed each agency to establish a plan for granting QSI's and directed the Civil Service Commission (CSC) to issue regulations and standards for agency plans. By regulation at 5 C.F.R. § 531.412, the Commission required each agency plan to include "standards and procedures to provide for the granting of quality increases with fairness to all employees."

In accordance with 5 C.F.R. § 531.411, to qualify an employee for a QSI an agency must find that:

- "(1) the employee concerned has been performing the most important functions of his position in a manner that substantially exceeds normal requirements \* \* \*, and
- "(2) the employee's high level of effectiveness has been sustained to the extent that it may be considered characteristic of his performance." (Emphasis added.)

The Department of the Army's plan for granting QSI's is incorporated in Army Regulation 672-20, and the version covering Mr. Ponce's case was dated May 10, 1972. Paragraph 9-1c states:

"The period of performance on which a recommendation for a quality increase will be based must be not less than 12 months in the same job, at the same grade, exclusive of extended periods of leave (i. e., extended absence on military duty LWOP, maternity leave or sick leave)."

This provision complies with the requirement for a sustained period of performance. No language in Army Regulation 672-20

suggested that the performance must be restricted to the grade level at which the employee was paid.

According to the Army investigator recommending Mr. Ponce's retroactive temporary promotion and the documentation in support of the recommendation, Mr. Ponce performed the duties of one established GS-12 position to which he was officially assigned between June 30, 1971, and June 30, 1974. The period on which Mr. Ponce's QSI was based, between October 1, 1971, and October 1, 1972, was well within the time he performed the duties of this position. Consequently, Mr. Ponce satisfied the 1-year minimum performance period required by paragraph 9-1c of Army Regulation 672-20. Further, in proposing the step increase, Mr. Ponce's supervisor stated that he saw no reason to believe that the high-level performance of Mr. Ponce would not continue. This statement was required by paragraph 9-1(4) of Army Regulation 672.20, and was consistent with the policy in 5 C.F.R. § 531.411 that the high-level effectiveness of the employee be characteristic of his performance and be sustained. Moreover, in connection with the claim, the supervisor furnished a written statement, dated April 26, 1978, to the effect that Mr. Ponce was given the QSI for high quality work on several specific projects and that he would have been given the award regardless of what grade he held at the time.

Since the parent command, DARCOM, concluded that the QSI would have to be cancelled if a retroactive temporary promotion is granted for the same period, we think it is pertinent to consider the views of the Civil Service Commission on this issue. In response to questions similar to those raised by DARCOM, Raymond C. Weissenborn, Chief of the CSC's Pay Policy Division by letter dated March 3, 1978, advised John B. Schwartz, Director of Human Resources, Social Security Administration, HEW, that "[t]here is no statutory or regulatory bar to the processing of a quality step increase even if it is recommended and approved while the employee is on detail to another position." He added that FPM Chapter 451 constitutes guidance to supervisors, but is not regulatory in nature and does not prevent the granting of a QSI otherwise properly recommended and approved. However, he noted that a QSI should be granted for work performed in the employee's regular position rather than for work in the detailed position. Finally, Mr. Weissenborn

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responded to the specific question of whether a QSI award made while the employee was on detail must be withdrawn before processing the employee's subsequent claim for backpay based on the overlong detail to a higher grade. He concluded that:

"\* \* \*[t]he QSI, if properly granted, may not be withdrawn before the processing of a retroactive temporary promotion. The employee is awarded the QSI for previous work in the regular position as well as future work upon expected return to the regular position. The temporary promotion is merely an intervening period during which the employee is serving at a higher grade level."

We agree with the CSC's conclusions and we believe that they apply to Mr. Ponce's case. His QSI award was properly recommended and approved in 1972 under Army Regulations. He received the step increase in 1972 and no question was raised as to its validity until after he filed a backpay claim in 1977 for the period of the 36 month detail to a higher grade position. Even then the Army did not say the award was absolutely void. The Army concluded that the QSI remained valid if the claim for a retroactive temporary promotion was withdrawn, but concluded that the QSI could not stand if the retroactive temporary promotion was given effect for the same period.

The Army's conclusion is contrary to the conclusion reached by the Chief of the Pay Policy Division, Civil Service Commission. Further, in the present case the QSI was granted for work that was substantially involved in Mr. Ponce's regular position, the standard announced by the Chief of the Pay Policy Division for QSI's awarded during details involving retroactive temporary promotions. Mr. Ponce had performed 15 months in the GS-12 position when he received the QSI and he served an additional 21 months in that position. Although paid as a GS-11, his detail to the GS-12 position was in the same occupational series (Program Analyst, GS-345) as his former GS-11 position in the same office. The job descriptions are similar, and the GS-12 position duties substantially included those of the GS-11 duties which it replaced in the Director's Office of the Materiel Management Directorate. For these reasons, the supervisor could reasonably conclude that the high quality of Mr. Ponce's work in the GS-12 position reflected a sustained superior

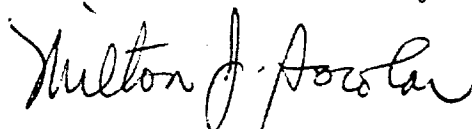
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performance in the past and the likelihood of its continuance in the employee's regular GS-11 Program Analyst position.

#### CONCLUSION

Consequently, we find no inconsistency between the award of a QSI to Mr. Ponce in 1972 for his sustained, high quality performance and the approval in 1978 of a retroactive temporary promotion to him for the period of his overlong detail to the higher grade position. Once the QSI was duly awarded and put into effect, the right to it became vested in the absence of a clear violation of statute or implementing regulation. See 31 Comp. Gen. 619, 623 (1952). We find no violation of law or regulation in the awarding of a QSI to Mr. Ponce.

Accordingly, Mr. Ponce is entitled to receive the retroactive temporary promotion to GS-12 approved in 1978 and to retain the Quality Step Increase previously awarded to him in 1972. Since the periods overlap, his backpay for the period of the retroactive temporary promotion is equal to the difference between the proper rate for GS-12 and the pay he actually received as a GS-11 (including the extra pay received for the QSI). At the termination of the detail, Mr. Ponce reverted to GS-11, at which time the QSI would have its first monetary effect.



For The Comptroller General  
of the United States