

DECISION



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

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FILE: B-192711

DATE: April 9, 1979

MATTER OF: Barbara J. Monteiro - [Claim for retroactive temporary promotion and backpay *By Navy Department Employee*]

- DIGEST:
1. Grade GS-6 civilian employee of the Department of the Navy, who from December 10, 1975, through June 27, 1977, performed some duties not covered by her job description previously and subsequently performed by higher graded employees, is not entitled to a retroactive temporary promotion to grade GS-7 with backpay, since Federal employees are entitled only to the salaries of the positions to which they are actually appointed regardless of the duties performed. United States v. Testan, 424 U.S. 392 (1976).
 2. Federal employees who are not officially detailed for an excessive amount of time to an existing, established classified higher grade position are not entitled to retroactive temporary promotion with backpay for such period they perform some of the duties prescribed for the higher position.

This action is in response to a letter dated July 16, 1978, from Mrs. Barbara J. Monteiro, an employee of the Naval Electronics Systems Command, United States Navy, Washington, D. C., which constitutes an appeal of action by our Claims Division dated July 14, 1978, denying her claim for a retroactive temporary promotion and backpay for the period December 10, 1975, through June 27, 1977.

The record shows that while employed as a GS-6 Mail and File Clerk, Mrs. Monteiro was assigned some message liaison duties which were subsequently included in a GS-9 Management Assistant position advertised on April 12, 1976, and filled by another person through competitive procedures. She contends that she continued to spend substantial time performing message liaison duties from December 10, 1975, through June 27, 1977, even though these duties were included in other job descriptions. Although she claims retroactive pay of a GS-7 Management Assistant for service of more than 120 days in a higher graded position based on 56 Comp. Gen. 427 (1977), her job assignment was not changed during the period and she was not

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detailed to an established position at a higher grade. For the period involved, Mrs. Monteiro filed a discrimination complaint which was subsequently resolved with her consent and she indicates that she had complained to her agency that she was performing duties that were not officially assigned to her.

Mrs. Monteiro's claim was disallowed on the ground that decisions of this Office implemented by Civil Service Commission (CSC) Bulletin No. 300-40, May 25, 1977, require that in order to receive a retroactive temporary promotion, an employee must have been detailed without prior CSC approval for more than 120 days to an established position at a higher grade. Performance of certain duties without assignment of the employee to a particular position does not amount to a detail. Further, the denial states that although Mrs. Monteiro's position may have been misclassified, such classification matters are under jurisdiction of her agency and the CSC and that she was not entitled to backpay based upon wrongful classification.

Mrs. Monteiro in her appeal states that the duties assigned to her in 1975 were actually performed by an employee in a GS-12 position prior to his retirement in April 1975, and subsequently included in the duties of the GS-9 Management Assistant. Her claim is based on the performance of duties that were in an established GS-12 position from December 1975 until March 1976 and in an established GS-9 position from April 1976 until June 1977.

The general rule long followed by this Office and the courts of the United States in cases of this nature is that an employee of the Government is entitled only to the salary of the position to which he is actually appointed, regardless of the duties he performs. When an employee performs duties normally performed by one in a grade level higher than the one he holds, he is not entitled to the salary of the higher grade level until such time as he is promoted to that grade. United States v. McLean, 95 U.S. 750 (1877); Coleman v. United States, 100 Ct. Cl. 41 (1943); Dianish v. United States, 183 Ct. Cl. 702 (1968); 52 Comp. Gen. 631 (1973); and Matter of Elizabeth McLaughlin, B-186556, July 27, 1976. In Coleman v. United States, *supra*, a claimant sued to recover money allegedly owed him because he had been required to perform duties at a grade level higher than the one he held. The Court of Claims stated:

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"There are innumerable instances in the Government service where employees of a lower classification perform duties of a higher classification * * *. The salaries fixed by Congress are the salaries payable to those who hold the office and not to those who perform the duties of the office. One may hold the office only by appointment by his superior, and the law vests in the superior the discretion as to whether or not appointment to the office shall be made. Where the plaintiff has received the salary of the office to which he is appointed he has received all to which he is entitled under the law. * * *" 100 Ct. Cl. at 43. (Emphasis supplied.)

The classification of positions in the Government is now controlled by 5 U.S.C. §§ 5101-5115 (1976), under which the CSC (Office of Personnel Management) is empowered to prescribe regulations and engage in supervisory review of an agency's classifications. An employee who wishes a review of the grade of his position may file a classification appeal at any time, either with the employing agency or the Commission. In that connection, these provisions do provide that in the classification of positions, "the principle of equal pay for substantially equal work will be followed." 5 U.S.C. § 5101(1)(A). However, neither that provision nor any other provision creates a right to backpay for a period of improper classification, nor does it change the long established rule that an employee is not entitled to the benefits of a position until he has been duly appointed to it. United States v. Testan, 424 U.S. 392 (1976).

Hence, Mrs. Monteiro was not entitled to a grade GS-7 salary for the period claimed simply on the basis that she performed duties commensurate with those previously performed by a grade GS-12 employee and subsequently by a GS-9 employee, since she was never officially appointed or promoted to a grade higher than GS-6. Since she believed that she was improperly classified at the time, an appropriate remedy was available to her through the means of the classification appeal provided by the Classification Act and implementing regulations prescribed by the CSC. She did not file a classification appeal and the record indicates that on June 23, 1977, she agreed to reassignment as an Office Assistant, GS-6, effective June 27, 1977, with the stipulation that she be

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offered the next available GS-7 position in the Command for which she qualified.

Mrs. Monteiro believes that even though not appointed to a higher graded position, her duty assignments for more than 120 days should be considered as detailing her to a grade GS-7 position and that she should therefore be awarded a retroactive promotion in accordance with our decision in 56 Comp. Gen. 427 (1977). A detail is the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to his regular duties at the end of the detail. In 55 Comp. Gen. 359 (1975) and 56 Comp. Gen. 427 (1977), it was held that an employee officially detailed to an established, classified, higher grade position for more than 120 days without CSC approval, is entitled to a retroactive temporary promotion with backpay for the period beginning with the 121st day of the detail until the detail is terminated, provided the employee was otherwise qualified and could have been promoted into the position at that time.

In the present case, an established, classified grade GS-7 position incorporating the duties performed by Mrs. Monteiro had not been established during the time of her claim. She could not have been detailed to a position which did not exist. Therefore, our decision in 56 Comp. Gen. 427 (1977) is not for application in her claim.

The action taken by our Claims Division is sustained.


Deputy Comptroller General
of the United States