

PLM-I

DECISION



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

10,677

FILE: B-192961

DATE: July 9, 1979

MATTER OF: Charles W. McGinnis [Claim for Retroactive Temporary Promotion and Backpay]

DIGEST: Employee, classified as grade GS-13, alleges that he was detailed to GS-14 position for 20 months and was wrongfully denied temporary promotion. He claims retroactive pay under Turner-Caldwell, 56 Comp. Gen. 427 (1976). His claim is denied. Record fails to indicate establishment of higher graded position to which employee was assigned. The principles of Turner-Caldwell allowing retroactive temporary promotions for details to higher grade positions, do not apply where the position involved was not an established higher grade position.

Mr. Charles W. McGinnis has requested reconsideration of our Claims Division's denial on June 14, 1978, of his claim of a retroactive temporary promotion. Mr. McGinnis is a former employee of the Department of Health, Education, and Welfare *A&C 000022* (HEW), and his claim is based on an alleged detail to a GS-14 position during the period January 2, 1975, to September 12, 1976.

The claimant entered on duty with the Division of Management, Social and Rehabilitation Service, HEW, on December 10, 1972, at grade GS-13 in the GS-501-13 Financial Management Adviser position. Effective January 2, 1975, Mr. McGinnis was assigned to the position of State Grants Adviser for Pennsylvania. Effective September 12, 1976, Mr. McGinnis was reassigned from his Financial Management position (GS-501-13) to the position of Supervisory State Grants Manager (GS-501-13).

On July 21, 1977, Mr. McGinnis filed a claim with HEW for a retroactive temporary promotion to GS-14 and backpay for the period of January 2, 1975, to September 12, 1976, when he served as State Grants Adviser for Pennsylvania. Upon review of the matter, HEW authorities concluded that the assignment of Mr. McGinnis to the position of State Grants Adviser for Pennsylvania did not alter his position of record nor did it result in added duties or responsibilities that were not already a part

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of his job as Supervisory Grants Manager, GS-13. Further, it was concluded that he was not assigned to a new position description or to higher graded duties.

Mr. McGinnis disagreed with HEW's denial of his claim and submitted the matter to the General Accounting Office. Our Claims Division disallowed his claim on June 14, 1978, for the reason that there was no established position classified at a higher grade to which he was actually detailed.

On this appeal, Mr. McGinnis contends that position description number RFO-1004, GS-501-14, applied to the position in question from at least the fall of 1972 and that his predecessor as Grants Manager for Pennsylvania served under RFO-1004 as a grade GS-14. Mr. McGinnis maintains that, since he performed the full range of duties and responsibilities of the position, he should be paid at the same rate as his predecessor.

The Department has advised us in reference to Mr. McGinnis' appeal that the person who served as Grants Adviser for Pennsylvania prior to Mr. McGinnis had been reassigned to the position of Special Assistant to the Regional Commissioner, Social and Rehabilitation Service, GS-301-14, beginning September 1, 1974. His duties included special assignments for the Regional Commissioner, as well as carrying on the duties associated with being the Grants Manager for Pennsylvania. The duties of Special Assistant equated to the GS-14 level, and the additional responsibility for Pennsylvania had no impact on his grade. The responsibility for Pennsylvania was reassigned to Mr. McGinnis on January 2, 1975, and his predecessor lost this responsibility and concentrated his efforts on his responsibility as Special Assistant to the Regional Commissioner. At the same time, Mr. McGinnis lost his prior responsibility for the District of Columbia. The HEW states that the position description referred to by Mr. McGinnis, position description number RFO-1004, was never assigned to either Mr. McGinnis or his predecessor.

Mr. McGinnis' claim was considered by HEW and this Office under the decision in Everett Turner and David L. Caldwell, 55 Comp. Gen. 539 (1975), affirmed at 56 Comp. Gen. 427 (1977). We held therein that employees detailed to higher grade

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positions for more than 120 days, without prior Civil Service Commission approval, are entitled to retroactive temporary promotions with backpay for the period beginning with the 121st day of the detail until the detail is terminated. Subsequently, in Matter of Marie Grant, 55 Comp. Gen. 785 (1976) we ruled that the Turner-Caldwell decision applied retroactively to extended details to higher grade positions. In Reconsideration of Turner-Caldwell, 56 Comp. Gen. 427 (1977), we reaffirmed our earlier determination. We held that, in the limited circumstances of detail in excess of 120 days an employee could receive backpay, but that rule was predicated upon the employee being detailed, formally or informally to an established higher grade position. See 56 Comp. Gen. at 430. Thus, although an employee may not be allowed backpay for the performance of duties which should be classified at a higher grade, he may be granted backpay if he is detailed to a higher grade position and retained in that detail for a period in excess of the time permitted in the mandatory regulations of the Civil Service Commission.

The Civil Service Commission has promulgated implementing guidance concerning Turner-Caldwell, supra, in Bulletin No. 300-40 dated May 25, 1977, subject: GAO Decision Awarding Backpay for Retroactive Temporary Promotions of Employees on Overlong Details to Higher Graded Jobs (B-183086). Paragraph 4 of that bulletin states: "For purposes of this decision, the position must be an established one, classified under an occupational standard to a grade or pay level." (Emphasis in original.) This statement emphasizes that the crucial aspect in the Turner-Caldwell line of cases is that the position or duties to which an employee is detailed be those of an established and classified position. See also Matter of Ross and Squire, 57 Comp. Gen. 536 (1978); and Matter of Patrick J. Fleming, B-191413, May 22, 1978.

As indicated above, it is the position of HEW that the assignment of Mr. McGinnis as State Grants Adviser for Pennsylvania did not alter his position of record nor did it result in added duties or responsibilities that were not already a part of his job as Supervisory Grants Manager, GS-13. The Department has also rebutted the claimant's argument that the position was classified at the GS-14 level. Thus, despite the fact that his predecessor was a GS-14, Mr. McGinnis did not fulfill the duties of an established classified GS-14 position. Therefore, Turner-Caldwell is not applicable to his claim, and there is no authority to grant Mr. McGinnis retroactive temporary promotion and backpay.

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Accordingly, Mr. McGinnis' claim is denied and the action taken by our Claims Division is sustained.

Deputy


Comptroller General
of the United States