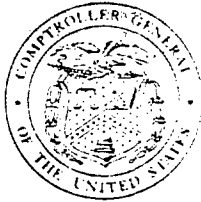


PLM-II

DECISION



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

9643

FILE: B-193336

DATE: March 23, 1979

MATTER OF: Duane E. Tucker - Within-grade increase -
Salary retention - Repromotion to prior position

DIGEST: Where an employee is demoted and later repromoted to the same grade and step level as previously held, a new waiting period for periodic step increases begins, even though the employee received the same rate of pay during the demotion period as saved pay. On repromotion, the constructive increase in pay from the applicable rate determined in accord with last sentence of 5 U.S.C. § 5334(b) for the lower grade held during demotion is an equivalent increase under 5 U.S.C. 5335(a) (1976).

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This action is in response to a letter dated September 11, 1978, from Mr. Duane E. Tucker, an employee of the Department of the Air Force, which constitutes an appeal from a settlement by the Claims Division of this Office dated August 22, 1978, which disallowed his claim for a within-grade increase to be retroactively effective to January 22, 1978.

The record shows that Mr. Tucker attained step 6 of grade GS-13 on September 21, 1975. Due to a reduction in force he was downgraded to grade GS-11, step 10, with a retained rate of pay on June 27, 1976. He was repromoted to grade GS-13, step 6; on October 31, 1976. Under normal circumstances, without the downgrading, he would have been eligible to receive a within-grade increase, to the grade GS-13, step 7, on September 21, 1977, pursuant to the provisions of 5 U.S.C. 5335(a)(2). Mr. Tucker contends that the time that he previously served in grade GS-13, step 6, from September 22, 1975, until June 27, 1976, a period of 40 weeks should be creditable toward advancement to step 7 after his repromotion on October 31, 1976, to grade GS-13, step 6, so as to make him eligible for a within-grade increase in 64 more weeks, i.e., January 22, 1978. The settlement of August 22, 1978, determined that the employee had received an equivalent increase when he was repromoted, and, therefore, a new waiting period for a step increase commenced at that time, October 31, 1976.

Section 5335 of title 5, United States Code (1976), provides in part that an employee is eligible for periodic step increases in pay

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upon completion of 104 calendar weeks of service in pay rates 4, 5, and 6 subject to the condition that the employee did not receive an equivalent increase in pay from any cause during that period.

In 43 Comp. Gen. 507 (1964) we held that where an employee is demoted and later repromoted to his former grade, a new waiting period for periodic step increases would begin, even though the employee was entitled to receive the same rate of pay during the demotion period as a retained rate, since on repromotion the constructive increase in pay from the applicable rate determined in accord with the last sentence of 5 U.S.C. § 5334(b) for the lower grade held during demotion is an equivalent increase under 5 U.S.C. § 5335(a). See 57 Comp. Gen. 646 (1978); 43 Comp. Gen. 701 (1964); and B-176492, October 26, 1972.

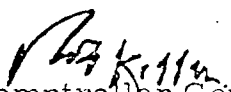
Therefore, in order for Mr. Tucker to receive the periodic step increase to step 7 he must complete 104 calendar weeks as required in 5 U.S.C. § 5335(a)(2), from the date of repromotion.

Accordingly, the disallowance of the claim by the Claims Division is sustained.

Mr. Tucker asserts other employees are being treated differently. He states that:

"* * * [T]here are several persons who were downgraded from (for example) GS-12/4 to GS-11/10. When they were repromoted they received a cash increase from GS-11/10 to GS-12/6. They therefore, got credit for four years of service they did not spend while I am being disallowed nine months I did actually spend. * * *"

He requests an explanation. The limited facts set forth above preclude a conclusive determination as to what occurred; however, it is clear that the facts are different from Mr. Tucker's situation. It is indicated that the promotion from GS-11/10 to GS-12/6 is required to meet the two-step increase in 5 U.S.C. § 5333(b). In this connection see the fourth and fifth paragraphs on page 702 of the decision reported at 43 Comp. Gen. 701 (1964).


Deputy Comptroller General
of the United States