

DECISION



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

PLM-72

9644

FILE: B-193394

DATE: March 23, 1979

MATTER OF: Richard C. Dunn - Within-grade increase -
Salary retention - Repromoted 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 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) (1976).

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This action is in response to a letter dated September 19, 1978, from Mr. Richard C. Dunn, 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 November 13, 1977.

The record shows that Mr. Dunn attained step 7 of grade GS-13 on July 14, 1974. Due to a reduction in force he was downgraded to grade 12, step 10, with a retained rate of pay on June 27, 1976. He was repromoted to grade GS-13, step 7, on October 31, 1976. Under normal circumstances, without downgrading, Mr. Dunn would have been eligible to receive a within-grade increase to the grade GS-13, step 8, on July 14, 1977, pursuant to the provisions of 5 U.S.C. 5335(a)(3). The employee contends that the time that he previously served in grade GS-13, step 7, from July 14, 1974, to June 27, 1976, a period of 102 weeks, should be creditable toward advancement to step 8 after his repromotion on October 31, 1976, to grade GS-13, step 7, so as to make him eligible for a within-grade increase in 54 more weeks, i.e., November 13, 1977. 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

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in pay upon completion of 156 calendar weeks of service in pay rates 7, 8, and 9, 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.

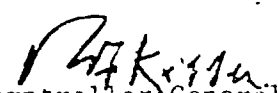
Therefore, in order for Mr. Dunn to receive the periodic step increase to step 8 he must complete 156 calendar weeks as required in 5 U.S.C. § 5335(a)(3), from the date of repromotion.

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

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

"During the same reduction-in-force there were several other personnel who benefited from being downgraded and repromoted. For example, persons downgraded from GS-12/4 to GS-11/10 when repromoted went to GS-12/6 to achieve the 'equivalent' of a two step increase. These persons received credit for four years service they did not spend, while I am being disallowed two years that I actually spent."

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. Dunn's situation. Mr. Dunn states that the promotion from GS-11/10 had to be to GS-12/6 to meet the two-step increase requirement. 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