

DECISION**DIGEST - L - C P**
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****764**

FILE: B-194121

DATE: October 29, 1979

MATTER OF:

- Backpay for Detail

DIGEST: GS-13 employee detailed to perform duties that subsequently were classified at GS-14 is not entitled to retroactive temporary promotion for period prior to the date on which the higher grade position was established or for the period after the position was downgraded to GS-13. Retroactive temporary promotion with backpay may be granted only for details to classified higher grade positions and contention that position was improperly downgraded to GS-13 is a classification matter.

This action is in response to an appeal by Mr. from our Claims Division's Settlement Certificate of November 15, 1978, by which his claim for retroactive temporary promotion and backpay was denied.

The record shows that Mr. was employed in the position of Mechanical Engineer, GS-13, Surface Mobility Division, U.S. Army Tank-Automotive Command (TADC) when he was detailed on May 1, 1975, for not to exceed 60 days, to a "special assignment" in the Office of the Director, Research, Development and Engineering Directorate, TADC. On October 22, 1975, Mr. was assigned the additional duty of Acting Chief, Configuration and Data Management Office, TADC. He performed both sets of duties through November 5, 1975. On November 6, 1975, a Mechanical Engineer GS-14 position was established which encompassed those responsibilities. Mr. performed the duties of the new position from November 6, 1975, to May 26, 1976. On May 27, 1976, that position was downgraded to a GS-13 and Mr. continued to perform the duties of the position until July 1, 1976, when the functions of the Configuration and Data Management Office, TADC, were transferred to the newly established U.S. Army Tank-Automotive Research and Development Command (TARADCOM). The position in TARADCOM corresponding to the Mechanical Engineer position in TACOM was established at the GS-13 level and Mr. performed the duties of that position from July 1, 1976 through September 25, 1976. On September 26, 1976, he was officially reassigned to the position of Mechanical Engineer, GS-13 on the TARADCOM special Staff. His job was abolished and a new Mechanical Engineer GS-14 position was established on February 4, 1977. On February 27, 1977, another employee was assigned to that position.

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In accordance with 56 Comp. Gen. 427 (1977), in which the Comptroller General affirmed earlier determinations that employees detailed to higher graded positions for more than 120 days without prior Civil Service Commission approval are entitled to retroactive temporary promotions if certain conditions are met, Mr. _____ was granted a retroactive temporary promotion from March 5, 1976, the 121st day after the GS-14 position was established, to May 26, 1976, when the position was downgraded. Mr. _____, however, is claiming retroactive temporary promotion from October 22, 1975, when he was assigned the duties of Acting Chief, to March 7, 1977, when he claims he moved to his current position.

Although Mr. _____ performed duties prior to November 6, 1975, which became a part of the GS-14 position, our Claims Division denied his claim for that period because he was not detailed to an existing position classified at a higher grade. Since an employee cannot be promoted to a position which has not been classified, he may not receive a retroactive promotion and backpay based on his performance of the duties of an unclassified position. See _____, B-193834, June 13, 1979, and _____, B-192961, July 9, 1979. This is so even though the duties subsequently may be classified at a higher grade. _____, B-187287, May 13, 1977.

Therefore, Mr. _____ is not entitled to retroactive temporary promotion and backpay for the period prior to establishment of the GS-14 position on November 6, 1975, and his right to retroactive temporary promotion terminated on May 27, 1976, when that position was downgraded. See _____, B-191801, October 20, 1978.

Mr. _____ claims that the position should not have been downgraded and that the downgrading was procedurally improper. Under the Classification Act of 1949, codified in 5 U.S.C. 5101 et seq. (1970), and the implementing regulations found in Part 511 of title 5 of the Code of Federal Regulations, an employee's agency and the Office of Personnel Management (formerly the Civil Service Commission) are primarily responsible for the classification of the duties of an employee's position. This Office has no authority to settle claims on any basis other than agency or Office of Personnel Management classification. _____, B-183103, June 2, 1975.

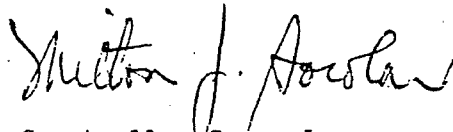
Mr. _____ suggests that the downgrading of the GS-14 position was not based on the duties of the particular position, but was "an adjunct to the reorganization of TACOM." He states that if such arbitrary action is permitted, the employee has no protection. We

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do not agree that an employee has no assurance against the arbitrary reclassification of his position. Under the provisions of 5 U.S.C. 5110, the Office of Personnel Management is required to review agency classification actions and correct those actions which are not in accordance with published standards. Under 5 U.S.C. 5112(b) an employee has the right to appeal agency classification actions. Procedures for such appeals are outlined in Subpart F, Part, 511 Title 5 of the Code of Federal Regulations.

On February 4, 1977, the GS-13 position in which Mr. [redacted] was serving was abolished and a new GS-14 position was established. On the basis of the record submitted, it does not appear that Mr. [redacted] is entitled to a retroactive temporary promotion for any of the brief period of his claim from February 4, 1977, to March 7, 1977. We have no evidence that he assumed the duties of the new position. Even if he had, he would not be entitled to a retroactive temporary promotion until he had been detailed to the newly established position for 120 days. See [redacted], B-1903354, February 14, 1978. In connection with his appeal Mr. [redacted] has enclosed evidence that he was not officially transferred from the abolished position until July 31, 1977. However, he has otherwise stated that he began to perform the duties of his present position on March 7, 1977, within the 120 day period, and he makes a claim only to that date. As a result of the above, we are unable to grant Mr. [redacted] a retroactive temporary promotion with backpay for any period after February 4, 1977.

The determination of our Claims Division is hereby sustained.



For The Comptroller General
of the United States