

12497

Plm-J
Mr. Volpe



DECISION

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

FILE: B-195230

DATE: January 10, 1980

MATTER OF: Earl E. McGinty - [Detail to NASA Excepted Position]

- DIGEST:
1. Employee, who was detailed from competitive service position to NASA excepted service position established under 42 U.S.C. § 2473(b)(2) (1970), claims retroactive temporary promotion and back-pay under Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), affirmed at 56 Comp. Gen. 427 (1977). Employee is not entitled to remedy under Turner-Caldwell decisions since those decisions apply only to details within the competitive service or the excepted service under the General Schedule.
 2. Employee, who was detailed from competitive service position to NASA excepted service position established under 42 U.S.C. § 2473(b)(2) (1970), claims retroactive temporary promotion and backpay under Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), affirmed at 56 Comp. Gen. 427 (1977). Employee is not entitled to remedy under Turner-Caldwell decisions since provisions in Federal Personnel Manual regarding change from competitive to excepted appointment were not met. See Isreal Warshaw, B-194484, September 28, 1979.

This decision is in response to the appeal by Mr. Earl E. McGinty of our Claims Division settlement denying his claim for a retroactive temporary promotion and backpay incident to his extended detail to a National Aeronautics and Space Administration (NASA) excepted service position established under 42 U.S.C. § 2473(b)(2) (1970). The issue presented for our decision is whether Mr. McGinty is entitled to a retroactive promotion and backpay for this extended detail under our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), affirmed at 56 id. 427 (1977).

AGC00032

Mr. McGinty was employed by NASA in a competitive service position (Supervisory Auditor, grade GS-15) as Deputy Director, Management Audit Office, when he was detailed to the position of Acting Director, a NASA excepted service position, from July 1, 1972, to May 25, 1974. He was subsequently promoted to that

~~008263~~

111259

B-195230

position on May 26, 1974. Our Claims Division settlement denied Mr. McGinty's claim on the grounds that (1) our Turner-Caldwell decisions apply only to employees serving in competitive positions or in excepted service positions under the General Schedule and (2) our Turner-Caldwell decisions are not applicable to temporary promotions to supergrade (GS-16, GS-17, or GS-18) positions since the law requires prior approval of the Civil Service Commission. See William Rankin, Jr., 56 Comp. Gen. 432 (1977).

On appeal Mr. McGinty argues that he was serving in a competitive service position (Supervisory Auditor) at the time of his detail and that since he was detailed to a NASA excepted service position, his promotion to this supergrade position would not be subject to Civil Service Commission approval as we required in our decision in Rankin, supra. We agree with Mr. McGinty's contentions, but, for the reasons stated below, we must sustain the disallowance of his claim for a retroactive temporary promotion and backpay.

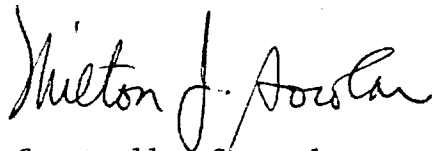
Our Office has held that where an employee is detailed to a higher graded position and the agency fails to seek Civil Service Commission approval to extend the detail for a period beyond 120 days, the agency must award the employee a retroactive temporary promotion and backpay if he continues to perform those higher grade duties. Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed at 56 id. 427 (1977). However, following guidance issued by the Civil Service Commission contained in CSC Bulletin No. 300-40, dated May 25, 1977, para. 8B, we have held that these Turner-Caldwell decisions apply only to details within the competitive service or details to positions in the excepted service which are under the General Schedule. Isreal Warshaw, B-194484, September 21, 1979. That is, the detail must be between two competitive service positions, between two excepted service positions within the General Schedule, or from a competitive service position to an excepted service General Schedule position. See Leonard J. McEnnis, Jr., 56 Comp. Gen. 982 (1977). However, a detail from an excepted service General Schedule position to a competitive service position will not be considered under our Turner-Caldwell decisions in view of the Civil Service Commission regulation prohibiting the assignment of competitive service work to an excepted service employee. Merle H. Morrow, 58 Comp. Gen. 88 (1978).

In the present case we note that Mr. McGinty was detailed from a competitive service position to a NASA excepted service

B-195230

Detail 1963 position. Such a detail would not come within the scope of our ~~Turner Caldwell~~ decisions, as discussed above. See Warshaw, supra. *6AD* Furthermore, *✓* this detail apparently did not comply with CSC regulations which prohibit an agency from appointing or converting an employee from the competitive service to the excepted service until the employee has been informed of the nature of the action and he has submitted a written statement that he is leaving the competitive service voluntarily. See Federal Personnel Manual, Chapter 302, Subchapter 2-10. *As stated in* Warshaw, supra, an employee must satisfy the statutory and regulatory requirements for a temporary promotion or there will be no remedy for an improperly extended detail. Since Mr. McGinty's detail from his competitive service position did not comply with the regulations governing appointment to the excepted service, Mr. McGinty is not entitled to a retroactive temporary promotion for his overlong detail.

Accordingly, we sustain our Claims Division determination denying Mr. McGinty's claim for a retroactive temporary promotion and backpay.



For The Comptroller General
of the United States