

DECISION



12316 Mr. Browne PLM-11
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-195648

DATE: December 13, 1979

MATTER OF: Mark A. Schaaf

A *to*
DIGEST: *Claim for 160*
Employee of the Public Health Service appeals denial by Claims Division of retroactive temporary promotion on grounds that an established position existed during period of claim. Claim is denied as record shows that the position to which employee claims he was detailed required incumbent to hold a medical degree which claimant did not possess.

By a letter dated June 22, 1979, Mr. Mark A. Schaaf requested reconsideration of Certificate of Settlement No. Z-2813540, issued June 12, 1979, which disallowed his claim for a retroactive temporary promotion and backpay.

The record shows that on February 27, 1976, Mr. Schaaf, a Staff Nurse Anesthetist, GS-12, with the United States Public Health Service at the Gallup Indian Medical Center, Gallup, New Mexico, was designated Acting Chief of Anesthesia Service (GS-14). This detail continued until August 13, 1977. On December 9, 1977, Mr. Schaaf filed a claim with his agency for a retroactive temporary promotion for this detail in accordance with Turner-Caldwell, 55 Comp. Gen. 529 (1975), affirmed, 56 id. 427 (1977), and Civil Service Commission Bulletin No. 300-40, May 25, 1977. The claim was denied on January 31, 1979. On February 12, 1979, Mr. Schaaf requested reconsideration of the agency's denial, and as a result of this request the claim was forwarded to our Claims Division. In disallowing Mr. Schaaf's claim on June 12, 1979, the Claims Division stated in part:

"CSC Bulletin No. 300-40 requires that the detail must have been to an established position, classified under an occupational standard to a grade or pay level. Since the position whose duties you performed was established for a member of the uniformed services and not classified to a GS grade or pay level before July 13, 1977, we may not allow your claim for the period before that date."

~~008082~~

111106

B-195648

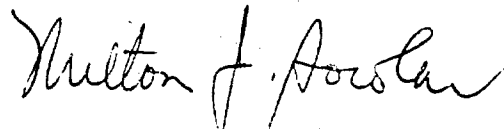
Mr. Schaaf appeals the action of the Claims Division on the basis that a position was established in 1973 and submitted a copy of a position description for GS-602-14. The claim is denied for the reasons stated below.

In order for an employee to be entitled to a retroactive temporary promotion under the rationale of Turner-Caldwell, the employee must meet the minimum qualifications for promotion to the position to which he was detailed. Thus, it is stated in 56 Comp. Gen. 431:

"In this connection, certain statutory and regulatory requirements could affect the entitlements of an employee otherwise qualified for corrective action as a result of an improper extended detail. For example, an employee improperly detailed for an extended period, who fails to meet the time in grade requirements of the 'Whitten Amendment,' 5 U.S.C. 3101 note, would not become entitled to a retroactive temporary promotion until such time in grade requirements were satisfied."

CSC Bulletin 300-40 lists additional statutory and regulatory requirements necessary for promotion at para. 8.c. In this regard Patrick L. Peters, B-189663, November 23, 1977, affirmed, October 5, 1978, held that an employee, who claimed to have performed the duties of a higher grade position, was not entitled to a retroactive temporary promotion, because inter alia he did not have the requisite engineering degree necessary for promotion to the higher grade position.

The GS-602-14 position identified by Mr. Schaaf requires that the incumbent be qualified as a medical officer. Accordingly, since the record does not show that Mr. Schaaf is qualified for a medical officer position, since he did not have a medical degree, the disallowance of his claim is sustained.



For The Comptroller General
of the United States