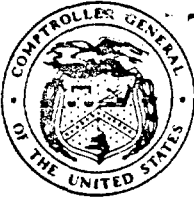


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DECISION

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

FILE: B-195665

DATE: November 6, 1979

MATTER OF: Frank Dudley - [Claim for Retroactive Promotion
and Backpay]

DIGEST: GS-13 employee is not entitled to retroactive temporary promotion and backpay under rationale of Turner-Caldwell decisions. Part of his claim prior to March 14, 1972, is barred under 31 U.S.C. § 71a as it was not received in GAO until March 14, 1978, and employee was not detailed to higher-graded GS-14 position during remaining period of claim. Record shows employee was assigned to position classified on March 1, 1972, at GS-13 level and he should have appealed classification to agency or Civil Service Commission.

This action is in response to the appeal of Mr. Frank Dudley of our Claims Division settlement dated May 18, 1979. The settlement denied his claim for a retroactive temporary promotion and backpay. For the reasons stated below we sustain the settlement.

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Mr. Dudley, who occupied a GS-13 position, states that he performed the higher-graded duties of a GS-14, Chief, Data Transmission Section, Kennedy Space Center, during the period January 1969 to January 21, 1973. Thus, he contends he is entitled to a temporary promotion and backpay on the basis of our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 id. 427 (1977), which held that employees are entitled to temporary promotions for extended details to higher-level positions, provided they meet certain requirements.

Mr. Dudley's claim was filed in this Office on March 14, 1978. Section 71a of title 31, United States Code, provides that any claim cognizable by the General Accounting Office which is not received in GAO within 6 years after the date the claim accrued is barred from consideration. Consequently, the portion of Mr. Dudley's claim which arose prior to March 14, 1972, cannot be considered.

Mr. Dudley's main contention in support of his request for review is that GS-14 employees were assigned to the Chief's position both prior and subsequent to the date he occupied it.

The record shows that the position which Mr. Dudley held as Chief of the Data Transmission Section was classified on March 1, 1972, as a

*Government employees
Backpay claims
Held as
Compensation*

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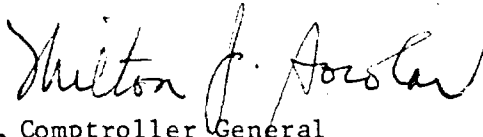
B-195665

Supervisory Electronics Engineer, GS-13. Therefore, we do not believe that Turner-Caldwell is applicable in this case because Mr. Dudley was not detailed to a higher-graded position. The Civil Service Commission issued its Bulletin No. 300-40, May 25, 1977, in order to provide instructions for the implementation of our Turner-Caldwell decisions. A detail is defined therein as the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to regular duties at the end of the detail. Since Mr. Dudley was not detailed to another position at a higher grade, he is not entitled to the remedy provided by Turner-Caldwell, supra. Ivey N. Brown, B-195229, September 14, 1979.

The fact that higher-graded employees may have been assigned to Mr. Dudley's position indicates a classification problem. The general rule is that an employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties performed. Thus, in a reclassification situation, an employee who is performing duties of a grade level higher than the position to which he is appointed is not entitled to the salary of the higher-level position unless and until the position is classified to the higher grade and he is promoted to it. United States v. Testan, 424 U.S. 392 (1976); 55 Comp. Gen. 515 (1975). Mr. Dudley should have requested that his agency reclassify the position or should have filed an appeal of his position classification with the Civil Service Commission under the provisions of Part 511, Subpart F, Title 5 of the Code of Federal Regulations.

Mr. Dudley has also inquired as to what other avenues of appeal are available to him. Decisions of the Comptroller General are binding on executive agencies of the United States. 54 Comp. Gen. 921, 926 (1975). However, independent of the jurisdiction of this Office, the United States Court of Claims and District Courts have jurisdiction to consider certain claims against the Government if suit is filed within 6 years after the claim first accrued. See 28 U.S.C. §§ 1346(a)(2), 1491, 2401, and 2501.

Accordingly, the action taken by our Claims Division disallowing Mr. Dudley's claim is sustained.


For the Comptroller General
of the United States