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DECISION



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

[Request For Reconsideration]

FILE: B-196180

DATE: February 17, 1981

MATTER OF: Bernhard E. Richert, Jr. - Detail to
Higher Graded Position - Reconsideration

- DIGEST:**
1. Economic Development Administration employee detailed to higher-graded classified position is entitled to backpay at GS-14 level through February 14, 1979, not May 7 as previously determined. By FPM Bulletin 300-48, effective February 15, 1979, Office of Personnel Management (OPM) delegated authority to agencies to detail employees to higher-graded positions without prior OPM approval (1) for up to 1 year during major reorganizations as determined by the agencies; and (2) for up to 240 days in other situations. Where detail exceeded 120 days and right to backpay vested under Turner-Caldwell decisions prior to effective date of bulletin, employee is entitled to backpay up to effective date of Bulletin. On and after effective date, however, entitlement to backpay is governed by Bulletin's provisions. Decision of December 10, 1979, modified as to termination date.
 2. Bulletin has the effect of nullifying any claim after February 15, 1979. Therefore, employee's claim after that date for grade at GS-15 level need not be considered.

This decision is a request for reconsideration by Bernhard E. Richert, Jr., an employee of the Economic Development Administration (EDA), Department of Commerce, from a part of the determination in our decision Bernhard E. Richert, Jr., B-196180, December 10, 1979.

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We held therein that on the basis of our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 id. 427 (1977), Mr. Richert a grade GS-13, was entitled to a temporary promotion and backpay for a detail to a position classified in grade GS-15 in excess of 120 days without prior approval of the Civil Service Commission (CSC) (now Office of Personnel Management (OPM)). We determined that Mr. Richert was entitled to backpay at the GS-14 level from March 1, 1978, through May 6, 1979, since the evidence indicated that he continued to perform the duties of the higher grade position until that time. We denied his claim for backpay at the GS-15 level from March 2, 1979, through May 6, 1979, since the position to which he was detailed was reclassified on February 26, 1979, which was prior to Mr. Richert's eligibility date for promotion to grade GS-15, March 1, 1979.

The EDA states that a major reorganization took place on February 18, 1979, which resulted in a total reorganizing of the functions of the Program Development Division and the abolishment of the position description to which Mr. Richert contends he was detailed. Therefore, the agency contends that in order for Mr. Richert to receive back pay beyond February 17, 1979, he must be required to demonstrate that he performed the grade controlling duties of the new Division Chief position as required by the realigned functions of the new division. Mr. Richert on the other hand says that the reorganization was in fact a paper reorganization until May 1979, he served in the Chief's position until then, and that the new position description calling for a GS-14/15 was not implemented by EDA until May 7, 1979.

For the following reasons we need not discuss either the agency's or Mr. Richert's contentions, and our decision of December 10, 1979, is modified in part.

In the recent case of Joyce R. Morrison, B-197206, August 12, 1980, this Office considered the effect of FPM Bulletin No. 300-48, issued by the Office of Personnel Management. The bulletin is dated March 19, 1979, and states that it is effective February 15, 1979. The

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Bulletin states inter alia that agencies are delegated the authority to detail employees to higher grade positions for up to 1 year during major reorganizations as determined by the agency, and for 240 days in other circumstances, without prior OPM approval for the second 120 days. Thus, FPM Bulletin 300-48 must be considered in light of the nature of the remedy provided by our Turner-Caldwell decisions for over-long details to higher-grade positions. The remedy is a retroactive temporary promotion for the detailed person beginning on the 121st day of the detail. In the circumstances of the Morrison case, we concluded that where a continuing detail had exceeded 120 days without prior CSC or OPM approval and a right to backpay under Turner-Caldwell had vested prior to the Bulletin's effective date, the employee is entitled to backpay up to the effective date of the bulletin. This is so because the key to Turner-Caldwell is the lack of authority by the agency to detail beyond established limits. However, entitlement to backpay after the effective date of the bulletin must be based on the new broader limits it established.

The EDA underwent a major reorganization effective February 18, 1979. See EDA Directive No. 13.01-2 (July 8, 1979). Therefore, whether Mr. Richert was detailed after February 15, 1979, is immaterial since the Bulletin gave EDA the authority to detail employees to higher-graded positions for up to 1 year during a major reorganization, and for 240 days in other circumstances without prior OPM approval.

Therefore, after February 15, 1979, EDA had the authority to detail Mr. Richert to a higher-grade position for an additional 245 days without prior OPM approval under the major reorganization (365 days less the 120 already performed) or 120 days in other circumstances (240 days less the 120 already performed). Because the Bulletin has the effect of nullifying any claim Mr. Richert may have had after February 15, 1979, we need not consider the issue of whether he was detailed to a higher-grade position after that date.

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Accordingly, our decision in Bernhard E. Richert, Jr., B-196180, December 10, 1979, is modified in part as to the termination date. Mr. Richert is therefore entitled to temporary promotion and backpay at the GS-14 level from March 1, 1978, through February 14, 1979, not May 7, 1979, as previously stated.

Milton J. Forster

For The Comptroller General
of the United States