

13053

Plm-11
Mr. Brown

DECISION



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

FILE: B-196561

DATE: March 5, 1980

MATTER OF: Scott N. Lee

DIGEST: A GS-15 employee was detailed to a GS-16 (supergrade) position without agency requesting approval from the Civil Service Commission as required by 5 U.S.C. § 3324(a). Since agency had no authority to unilaterally place an employee in a supergrade position, retroactive temporary promotion is denied. See 56 Comp. Gen. 432 (1977). Estoppel argument must fail because the agency acted beyond the scope of its authority.

By a letter dated September 17, 1979, Mr. Scott N. Lee, through his attorney, appealed our Claims Division's settlement issued August 9, 1979, which denied his claim for a retroactive temporary promotion and backpay.

The record shows that at the time of the claim Mr. Scott was employed in a GS-15 position by the National Highway Traffic Safety Administration, Department of Transportation. Mr. Scott was assigned the duties of Chief, Accident Investigation Division, a GS-16 position, by a memorandum dated January 8, 1976. He was formally detailed to that position on March 1, 1976. On May 9, 1979, Mr. Scott requested a retroactive temporary promotion to grade GS-16 and backpay from January 8, 1976, until January 3, 1978. His request was administratively denied on May 29, 1979, and denied by our Claims Division on August 9, 1979. Both denials were based on our decision, Matter of Rankin, 56 Comp. Gen. 432 (1977), which held that temporary promotions to supergrade (GS-16, GS-17, or GS-18) positions may be made only with the prior approval of the Civil Service Commission (now Office of Personnel Management). That decision was based on the statutory requirements of 5 U.S.C. §§ 3324(a) and 5108(a).

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In his appeal Mr. Scott contends that he should not be penalized for the failure of his agency:

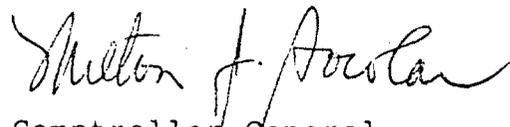
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"* * *to comply with the statutory requirement of obtaining prior CSC approval. It was the agency's responsibility and obligation to satisfy this requirement and the claimants should not be made to suffer for the errors of the agency's nonfeasance. The claimants had no choice but to place total reliance on the agency to meet its managerial responsibility. The agency should be estopped from not having to pay the higher supergrade rate to the claimants."

The denial of Mr. Scott's claim by our Claims Division on August 9, 1979, is sustained. In Matter of Rankin, supra, we addressed a similar situation where an agency detailed an employee to a supergrade position without seeking or receiving approval of the employee's qualifications for a supergrade position as required by 5 U.S.C. § 3324(a). In denying the retroactive temporary promotion in Rankin we noted that "an agency cannot unilaterally place an employee in a supergrade position* * *."

With regard to Mr. Scott's contention that his agency should be estopped from not having to pay him the salary of a supergrade position because of its error in failing to obtain approval of his qualifications for promotion from the Civil Service Commission, it is a well established rule of law that the Government is not bound beyond the actual authority conferred on its agents by statute or regulations. Furthermore, the Government is not estopped to deny the unauthorized acts of its agents. Those who deal with the Government are deemed to have notice of the limitations on authority. See German Bank v. United States, 148 U.S. 573, 579 (1893); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); 58 Comp. Gen. 35 (1978); 56 Comp. Gen. 85 (1976); and 53 Comp. Gen. 11 (1973).

Accordingly, since the agency was without authority to unilaterally place Mr. Scott in a supergrade position, the denial of his claim for a retroactive temporary promotion and backpay is sustained.



For The Comptroller General
of the United States

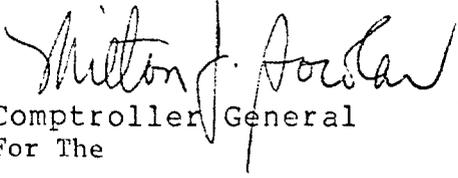
UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE

Memorandum

March 5, 1980

TO : Director, Claims

FROM : 
Comptroller General
For The

SUBJECT: Claim of Scott N. Lee - B-196561-O.M.

Returned herewith is file Z-2814782 and a copy of our decision of today, B-196561, sustaining your disallowance of Mr. Scott's claim for a retroactive temporary promotion and backpay.

Attachments