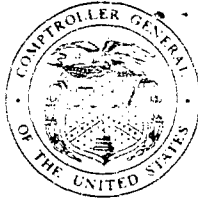


PAGE-5
Doc

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DECISION



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

FILE: B-196824

DATE: May 12, 1980

MATTER OF: Cannon R. Odom - [Position Classification Appeal] - Retroactive Temporary Promotion and Backpay

DIGEST:

- (1) Employee claims retroactive promotion and backpay for period from March 6, 1972, through June 26, 1976, for performing duties of higher-graded position. However, position was never established and classified at higher grade than employee's official position. Employee is entitled only to pay of position held, regardless of duties performed until position is classified to higher grade and he is appointed to reclassified position. See United States v. Testan, 424 U.S. 392 (1976) and Comptroller General decisions cited.
- (2) Statutory authority to establish appropriate classification standards and to allocate positions subject to the General Schedule rests with the agency concerned and the Office of Personnel Management. Thus, matters relating to allegations of improper position classification are for employing agency and Office of Personnel Management, not GAO, and GAO has no authority to award backpay to employee for period of erroneous classification of his position.
- (3) Remedy provided by our Turner-Caldwell line of cases is precluded where record does not support a finding that employee was detailed to an established classified higher-grade position.

This action is in response to a letter with enclosures dated October 5, 1979, from Mr. Cannon R. Odom, a civilian employee of the Department of the Army, concerning his entitlement to a retroactive temporary promotion and backpay incident to his employment during the period from March 6, 1972, through June 26, 1976.

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The matter of this claim was the subject of a settlement by our Claims Division dated June 20, 1979, which disallowed the claim on the basis that, while Mr. Odom's position may have been misclassified during the period of his claim, classification matters are under the jurisdiction of the agency concerned and the Civil Service Commission. And, since he did not qualify for retroactive promotion and backpay under the civil service regulations, Mr. Odom was only entitled to the salary of the position to which he was appointed because neither the Classification Act (5 U.S.C. §§ 5101, et seq.) nor the Back Pay Act (5 U.S.C. § 5596) creates a substantive right in an employee to backpay for the period of any claimed wrongful classification, citing to United States v. Testan, 424 U.S. 392 (1976), and our decision 56 Comp. Gen. 427 (B-183086, March 23, 1977).

Mr. Odom's appeal reasserts his entitlement under the Back Pay Act and implementing regulations, focusing on specific personnel actions which he states were subsequently found to be unwarranted, unjustified, and illegal, and which were intentionally directed at preventing the proper establishment of his position and grade.

Mr. Odom was officially appointed to the position of Electronic Engineer, GS-855-12, during the period of this claim. Mr. Odom contends that during the period from March 6, 1972, to June 26, 1976, he performed the duties of an Electronic Engineer, GS-855-13. He was promoted to the grade level GS-855-13 position in question on June 27, 1976. During the period of Mr. Odom's claim, position audits were conducted and it was determined that current job descriptions were not appropriate for certain technical positions such as that filled by Mr. Odom. On June 30, 1973, a draft of job description number 74-121--establishing for classification purposes the positional duties which Mr. Odom was performing as Electronic Engineer, GS-855-13--was submitted to the Director of the Electronic Warfare Laboratory (EWL) for his review and concurrence as the agency's designated classifying authority. However, the position was never established and the draft was returned to the designated Test

Director for the group to edit and modify the job description of his subordinates. The record shows that apparent differences between the Director, EWL, and the Chief, Office of the Test Director, concerning classification issues of job content and signatory approval, were not resolved until a special staff study found that certain technical positions were uniformly depressed one grade. As a result, certain technical members, including Mr. Odom, were non-competitively promoted on June 27, 1976.

Fundamental to the disposition of this appeal is the recognition of the well defined jurisdiction which this Office exercises in matters involving position classification issues. Generally, the Classification Act, 5 U.S.C. §§ 5101, et seq., governs classification of Federal positions in the General Schedule. Under 5 U.S.C. § 5107, individual agencies have authority to place positions in appropriate classes and grades in conformance with standards published by the Civil Service Commission (now Office of Personnel Management). See regulations contained in Part 511, Title 5, Code of Federal Regulations (1979). Further, under authority provided in 5 U.S.C. §§ 5110-5112, the Office of Personnel Management (OPM) reviews agency classifications and may revoke or suspend the agency's classification authority. Thus, an employee should appeal any alleged improper classification to his or her agency or to OPM. See 5 C.F.R. §§ 511.603, et seq. (1979). As a result, because statutory authority to establish appropriate classification standards and to allocate positions subject to the General Schedule rests with the agency concerned and OPM, this Office has no authority to settle claims on any basis other than the agency or OPM classification. William A. Campbell, B-183103, June 2, 1975. And, since OPM determinations on classification appeals are binding on this Office under 5 U.S.C. § 5112(a), this Office has no authority to modify such actions. Ms. Gwenn Herring, B-183120, February 21, 1975.

In view of the above, we must conclude that Mr. Odom's contentions in regard to the period of his alleged improper classification, and the allegedly intentional and unreasonable delay involved in the upgrading of

his position, are precisely in the nature of a classification appeal which is not within the jurisdiction of this Office. See also J. E. Skowronski, B-190442, April 13, 1978. Mr. Odom filed a classification appeal with the Dallas Region of the Civil Service Commission on July 15, 1974, and such appeal was denied on December 20, 1974. However, regardless of the success of an employee's classification appeal, and with one exception not pertinent here, classification actions may not be made retroactive under OPM regulations. Also, as pointed out by our Claims Division in its settlement, the Supreme Court held in United States v. Testan, supra, that neither the Classification Act nor the Back Pay Act, 5 U.S.C. § 5596 (1976) creates a substantive right to backpay for a period of wrongful position classification. Roger F. Dierking, B-195656, December 10, 1979.

Nor is Mr. Odom's claim cognizable under our decisions in Everett Turner and David L. Caldwell, 55 Comp. Gen. 539 (1975), affirmed 56 id. 427 (1977). The Turner-Caldwell line of cases authorize retroactive temporary promotions and backpay for those portions of details to higher-grade positions which are in excess of 120 days, provided the requirements for promotion have been met, when the approval of the OPM to extend the details beyond 120 days (applicable at the time in question) has not been obtained in accordance with paragraph 8-4f of subchapter 8, chapter 300, Federal Personnel Manual. However, this line of cases applies only where the employee is detailed to a position which is classified in a higher grade by competent authority and not a detail involving the performance of a higher-grade position not yet officially classified. Helen Mansfield, B-192765, May 9, 1979, and cases cited therein; J. E. Skowronski, supra. Thus, where the record does not support a finding that Mr. Odom was detailed to an established classified higher-grade position, the remedy provided by our Turner-Caldwell line of cases is precluded.

Accordingly, we are sustaining the action taken by our Claims Division in disallowing Mr. Odom's claim.

Milton J. Fowler

For the Comptroller General
of the United States