

DECISION

19598
Hon. orly

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

FILE: B-200300

DATE: September 30, 1981

MATTER OF: Paul A. Hirsimaki - [Claim for Retroactive Temporary Promotion and Backpay]

- DIGEST: 1. A GS-12 Design Engineer alleges that he was detailed to GS-13, Project Engineer position, and claims retroactive temporary promotion and backpay under Everett Turner and David L. Caldwell, 56 Comp. Gen. 427 (1977). In view of agency's report that employee did not perform all of the duties of the GS-13 position, Performance Evaluation and Rating submitted by employee which states that he had "been satisfactorily doing" GS-13 level tasks merely implies that he performed some higher-level duties in addition to the duties of his regular position. It is not sufficient to prove that he was temporarily detailed to the higher level position itself. Patrick J. Fleming, B-191413, May 22, 1978.
2. A GS-12 Design Engineer alleges that he was detailed to GS-13, Project Engineer position and claims retroactive temporary promotion and backpay under Everett Turner and David L. Caldwell, 56 Comp. Gen. 427 (1977). Employee's supervisor indicated that the technical requirements of both positions were quite similar, but that the GS-13 position required less supervision and control. Supervisor also stated that employee's work required detailed review. Where difference in positions lies in complexity of duties of higher-grade position, employee may not prevail by showing that in addition to doing type of work required under both position descriptions he also performed some of the duties of the higher-grade position. Robert Creel, B-193748, January 25, 1980.

116489

018774

Mr. Paul A. Hirsimaki appeals our Claims Division settlement, dated April 30, 1980, denying his claim for retroactive temporary promotion and backpay. The question presented for our decision is whether Mr. Hirsimaki has presented sufficient evidence to document his claim that he was detailed to an officially established, higher-graded position.

Mr. Hirsimaki claims that as a GS-12 Design Engineer of the Naval Ship Engineering Center, Naval Sea Systems Command, Department of the Navy, he was appointed to fill the position of a GS-13 Project Engineer who had been reassigned to work in another office. He claims that he assumed all of the duties and responsibilities of the GS-13 position from January 1, 1976, until October 21, 1978. Mr. Hirsimaki submitted a project directory and project reports as evidence that he performed the duties of the GS-13 position. He also submitted a Performance Evaluation and Rating, dated March 22, 1977, recommending that he be promoted to the GS-13 position. The recommendation provides:

"Mr. Hirsimaki has been recommended for advancement to the GS-13 level and has been satisfactorily doing GS-13 level tasks for well over a year. If he were a GS-13, he would have been rated as satisfactory (at fully or highly levels)."

The Claims Division denied Mr. Hirsimaki's claim because, although he may have performed some higher-level duties, he did not submit evidence to show that he was detailed to a higher-graded position. The Claims Division also relied on statements from Mr. Hirsimaki's supervisors which indicated that he was neither detailed to nor performed the full duties of the GS-13 Project Engineer position.

On appeal Mr. Hirsimaki submitted a memo stating that, in his opinion, he provided sufficient evidence to substantiate his allegations of a detail. Mr. Hirsimaki did not submit any additional evidence. Instead he relies on project descriptions, project reports and other technical project memoranda as well as on the above-cited Performance Evaluation and Rating to support his claim.

We have held that where an employee is detailed to a higher-graded position and the agency fails to seek Office of Personnel Management approval to extend the detail for a period beyond 120 days, the agency must award the employee a retroactive temporary promotion and backpay for the period of the detail in excess of 120 days. Retroactive temporary promotions for extended details to higher grades, 55 Comp. Gen. 539 (1975), affirmed at Everett Turner and David L. Caldwell, 56 *id.* 427 (1977).

Paragraph 8F of the Federal Personnel Manual (FPM) Bulletin No. 300-40, May 25, 1977, provides evidentiary standards which the employee must satisfy in order to prove his claim. Thus, paragraph 8F requires that agencies, in accordance with FPM supplement 296-31, Book II, subchapter S3-14, record details in excess of 30 calendar days and file it on the permanent side of the employee's Official Personnel Folder. However, in the absence of this form of documentation, paragraph 8F recognizes that the employee may provide other forms of acceptable proof of his detail. Such acceptable documentation includes official personnel documents or official memoranda of assignment, a decision under established grievance procedures, or a written statement from the person who supervised the employee during the period in question, or other management official familiar with the work, certifying that to his or her personal knowledge the employee performed the duties of the particular established, classified position for the period of the claim. See Dale W. Weaver, B-198759, February 10, 1981.

Thus, as indicated above, although the assignment of an employee to a particular higher-graded position need not be formally documented, there must be official recognition of his assignment to and performance of the higher-graded duties. Moreover, the burden is on the claimant to establish the liability of the United States and his right to payment. (See 4 CFR § 31.7 (1981)).

In this case, the above-cited Performance Evaluation and Rating on which Mr. Hirsimaki relies merely provides that he "* * * has been satisfactorily doing GS-13 level tasks for well over a year." However, in an administrative report to this Office, the employing agency, while admitting that he performed some GS-13

duties, specifically denies that Mr. Hirsimaki performed all of the duties and responsibilities of the higher-level position. In view of this, the statement from the Performance Evaluation and Rating must be read as merely implying that Mr. Hirsimaki performed some higher-level duties in addition to those duties normally performed by a GS-12. It is not sufficient to prove that he was temporarily detailed to the higher-graded position itself. Patrick J. Fleming, B-191413, May 22, 1978.

Furthermore, Mr. Hirsimaki's supervisor stated that the distinction between the GS-12 position and the GS-13 position centers around the question of supervision and control, and not around the very similar technical requirements of the two positions. He further states that Mr. Hirsimaki's work was subject to detailed review, unlike employees at the GS-13 level in the section.

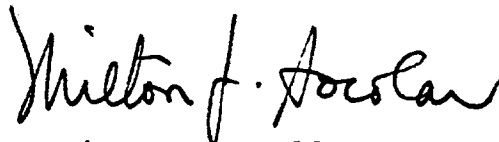
In view of this statement, Mr. Hirsimaki's submission of evidence indicating that he performed the same technical requirements as a GS-13 Project Engineer is not sufficient to prove his claim. We have held that where the difference between the employee's position and a higher-graded position lies in the degree of complexity of the duties, an employee may not prevail in a claim for a retroactive temporary promotion merely by submitting evidence to show that in addition to doing the type of work that was required under both position descriptions, he also performed some of the duties of the higher-graded position. Robert Creel, B-193748, January 25, 1980. In that decision, the employee alleged that he was performing the duties of a GS-13 supervisory auditor and submitted performance evaluations to that effect. However, his supervisor later stated that the employee had been primarily assigned only to audits at the GS-12 level of complexity. In view of the evidence submitted by the agency, we found that the employee was not detailed to a higher-graded position.

Here the agency has reported that Mr. Hirsimaki required detailed review normally associated with that required in a GS-12 position. This indicates

B-200300

that he did not perform his duties at the GS-13 level. Therefore, consistent with our holding in Robert Creel, supra, we hold that Mr. Hirsimaki has not met the burden of proof to support his claim.

We have reviewed the remaining evidence and arguments presented by Mr. Hirsimaki and find that they do not affect the above findings. Accordingly, his claim is denied.

A handwritten signature in cursive script that reads "Milton F. Howlan". The signature is written in dark ink and is positioned above the typed name and title.

Acting Comptroller General
of the United States