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DECISION



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

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FILE: B-201663

DATE: March 16, 1982

MATTER OF: Rosie K. Love - Backpay - Qualifications for Appointment

DIGEST: Former summer employee, appointed at GS-3, step 1, claims entitlement to GS-4, or to GS-3, step 5, on ground that agency offered her a summer job at GS-4. Before date of appointment, Forest Service found she did not qualify as a GS-4, and she was appointed as a GS-3. Claim for backpay is denied as agency may only appoint to grade for which employee is qualified. Appointment may not be retroactively changed absent a violation of nondiscretionary regulation or policy.

Anita R. Smith, an authorized certifying officer of the National Finance Center, U.S. Department of Agriculture, requests our decision on whether Ms. Rosie K. Love is entitled to backpay of \$233.20 from the Forest Service because she was appointed and paid at the grade GS-3 rate instead of the grade GS-4 rate set out in the letter offering her the job. For the reasons set out below, Ms. Love's claim may not be paid.

From June 2, 1980, to August 21, 1980, Ms. Love was a Forestry Aid appointed and paid as a GS-3, step 1, at \$4.30 per hour, under the Forest Service's 1980 Student Requisition Program. Ms. Love was a student at Mississippi Valley State University, where in March 1980, a Targhee Forest Manpower Development Specialist had spoken with interested students for summer employment under the Student Requisition Program. Ms. Love was recruited for this program, and, because of an administrative error, she was offered a summer job at Driggs, Idaho, as a GS-4 at \$4.83 per hour. However, when Ms. Love's application was rated, it was determined that she did not qualify for a GS-4 and, therefore, would have to be hired as a GS-3. Accordingly, she was appointed as a GS-3, step 1, at \$4.30 per hour.

Ms. Love states that the Forest Service should have looked at her application more carefully and advised her that she was only eligible for GS-3 before she arrived in

Idaho. She also states that the mistake was made by the Forest Service, not by her, and that, if she had known before she left home that the job would not be at a GS-4 wage, she might have accepted another job. She also states that she is entitled to a GS-3, step 5, if not qualified for a GS-4.

The general rule is that an employee of the Government is entitled only to the salary of the position to which she is actually appointed, Dianish v. United States, 183 Ct. Cl. 702 (1968). New appointments are normally required to be made at the minimum rate of the grade, 5 U.S.C. § 5333(a) 1976) and 5 C.F.R. 531.203 (1981). None of the factors that would create an exemption to this general rule are present here. Therefore, Ms. Love's alternative claim, to be paid at the grade GS-3, step 5, level is disallowed.

The Forest Service, when rating an application, is required to place the applicant into the appropriate qualifying grade level. In this case, forestry aids are usually hired at grade GS-2 or GS-3 if from non-forestry schools, as was Ms. Love, and the highest grade for which she could qualify was a GS-3.

Here, Ms. Love was offered a position at grade GS-4, due to an administrative error. When the error was discovered, the agency determined that Ms. Love was only qualified for a GS-3, and she was appointed and paid at that level.

In Dr. Kenneth J. Friedman, B-185805, May 18, 1976, a similar claim was presented. There the claimant asserted that he should have been appointed to a higher grade than that selected by the agency, based on his prior research experience. We held that the claimant would be entitled to a retroactive adjustment of his grade only if the agency had violated a nondiscretionary policy or regulation. Since we found that no such policy or regulation was violated, the claim was disallowed.

Similarly here, we find no evidence in the record of any nondiscretionary policy or regulation violated by the Forest Service in making Ms. Love's appointment at grade GS-3. Therefore, we find no basis for retroactively changing Ms. Love's grade from GS-3 to GS-4.

Accordingly, Ms. Love's claim for the difference in salary between GS-3 and GS-4 may not be paid.

for *Whitton J. Fowler*
Comptroller General
of the United States