

DECISION

10345
B.S. 2
PLM II

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

FILE: B-201945

DATE: June 4, 1981

MATTER OF: Ella L. Tedesco - Retroactive Temporary
Promotion

DIGEST Employee appeals action of Claims Group which denied claim for retroactive promotion and backpay based on detail to Assistant Personnel Officer position on grounds she did not perform all duties of the position. In support of appeal employee supplied former supervisor's statement indicating that she performed all duties of higher grade position. Since statement is inconsistent with same supervisor's previous statement given in course of agency hearing, claimant has not sustained burden of showing that she performed all duties of the position.

By letter of December 4, 1980, Ms. Ella L. Tedesco appealed Settlement Certificate Z-2825814, issued October 29, 1980. That action denied her claim for retroactive temporary promotion and backpay to GS-14 on the grounds that she did not perform all of the duties of the GS-14 position. For the reasons stated herein we affirm the disallowance of Ms. Tedesco's claim.

Ms. Tedesco's claim is based on Matter of Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed, 56 id. 427 (1977). That decision held that employees who are detailed to higher grade positions for more than 120 days without Civil Service Commission (CSC) (now Office of Personnel Management) approval are entitled to retroactive temporary promotions and backpay beginning on the 121st day of the detail. The burden of proof is on the claimant to show that he or she was in fact detailed to and performed the duties of a higher graded position. Matter of John R. Figard, B-181700, January 18, 1978; Matter of Richard M. Bartol, B-193618, May 9, 1979. Even where the evidence shows that an employee was detailed to perform the duties of a higher grade position, the employee may not be granted a retroactive temporary promotion and backpay where the evidence is insufficient to show that the employee in fact performed those duties. Matter of Nathan Lesowitz, B-185766, June 15, 1977.

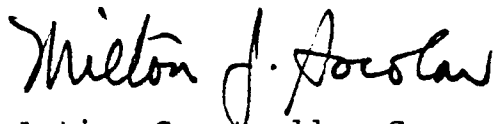
017133

115417

Ms. Tedesco contends that she was detailed to the position of Assistant Personnel Officer, No. PC-374-7, a GS-14 position, between April 29, 1974, and August 28, 1976. This was a combined GS-14 position consisting of Chief, Employment Branch, and Assistant Regional Personnel Officer. Ms. Tedesco has established that she was detailed to and performed the duties of Chief, Employment Branch. However, her claim was denied originally as there was insufficient evidence that she performed the additional duties of Assistant Regional Personnel Officer.

In her appeal of December 4, 1980, Ms. Tedesco supplied a supplementary statement from her former supervisor, Mr. Arthur G. Palman, regarding her performance of the duties of the Assistant Personnel Officer position. In her original claim she supplied transcripts of sworn testimony given by Mr. Palman before a Hearing Officer in which he indicated that Ms. Tedesco performed the duties of Assistant Regional Personnel Officer on an intermittent basis only and that those duties were more frequently, though intermittently, performed by other individuals. The supplementary statement confirms the testimony considered with the original claim, that Ms. Tedesco did not perform the duties of the Assistant Personnel Officer consistently throughout the period.

Although the new statement by Mr. Palman indicates that he intended to detail her to the Assistant Personnel Officer position, he says that others performed some of the duties of that position during the period. Since Ms. Tedesco did not perform all the duties of Assistant Personnel Officer during the period in question we must conclude that she has not met the burden of establishing her claim. Accordingly, the action of the Claims Group on October 29, 1980, is sustained.



Acting Comptroller General
of the United States