

Walenka 119321

**DECISION**



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

**FILE:** B-207889

**DATE:** August 31, 1982

**MATTER OF:** Judd A. Howell - Retroactive Reclassification  
and Backpay

**DIGEST:** Employee, classified as GS-11, claims retroactive promotion to GS-12 and backpay for the period that reclassification of his position was delayed by his supervisor's failure to submit the position for upgrading. The employee is not entitled to a retroactive promotion and backpay. A classification action creating a higher level position becomes effective when an official with properly delegated authority approves the reclassification. 5 C.F.R. § 511.701 (a)(i) (1982). An employee cannot be promoted retroactively to a date preceding official reclassification, since the higher level position does not exist before that date. Nor does the Backpay Act provide a monetary remedy for periods of incorrect classification. United States v. Testan, 424 U.S. 392 (1976).

Mr. Foon C. Lee, an Authorized Certifying Officer of the United States Department of the Interior, asks whether an employee may receive a retroactive promotion and backpay for the period that his position's reclassification was delayed by his supervisor's failure to submit the position for upgrading. We hold that the employee cannot be promoted retroactively because the higher grade position was not created until the previously existing position was reclassified by an official with properly delegated authority to do so. There is no authority for granting backpay for periods that an employee's position is incorrectly classified.

The Department of the Interior, National Park Service, hired Mr. Judd A. Howell on February 24, 1980, as a GS-11 employee. At the time the position was established the classifier recommended that the position be reevaluated in

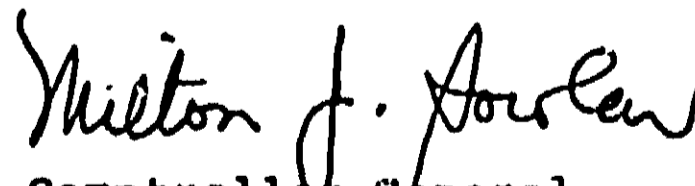
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1 year for possible upgrading. Although Mr. Howell's supervisor could have submitted the position for upgrading in February 1981, he forgot to do so. He submitted the position for reclassification in August 1981 after Mr. Howell requested the action. The position was subsequently reclassified and on November 29, 1981, the employee was promoted to a GS-12. If the position had been submitted for reclassification in February 1981, the supervisor believes the promotion would have been effective in late May 1981, 6 months before the employee requests retroactive promotion and backpay for a period beginning in late May and ending on November 29, 1981.

The classification of positions in the General Schedule is governed by the Classification Act of 1949, which is codified in 5 U.S.C. §§ 5101-5115 (1976). The regulations implementing these code sections provide that the effective date of a classification action is "the date an official with properly delegated authority approves (certifies) the proposed classification." 5 C.F.R. § 511.701(a)(1) (1982). Prior to final administrative action by an official with proper delegated authority in the National Park Service, Mr. Howell's GS-12 position did not exist. Therefore, he could not receive a promotion to a GS-12 before the date of official reclassification. See Roger F. Dierking, B-195636, December 10, 1979.

Mr. Howell also claims backpay under the Back Pay Act 5 U.S.C. § 5596 (1976), for the period that reclassification of his position was delayed. However, the Back Pay Act does not provide a monetary remedy for periods of incorrect classification. United States v. Testan, 424 U.S. 392 (1976). Although the reclassification of Mr. Howell's position may have been delayed, he is only entitled to the salary of the position to which he was appointed. See Vernon W. Gudkese, B-205641, June 22, 1982.

Accordingly, Mr. Howell's claim for retroactive promotion and backpay is denied.



Acting Comptroller General  
of the United States