

**DECISION**

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

**FILE:** B-217187

**DATE:** August 4, 1986

**MATTER OF:** Steve Charnovitz - Retroactive Promotion

**DIGEST:**

Employee's claim for backpay based upon allegation that the position he occupied was reclassified at a higher grade is denied where the record demonstrates that his position was not reclassified.

This is an appeal from the settlement of our Claims Group which denied the claim of Steve Charnovitz for backpay for the period March 4, 1982, to December 26, 1982. We sustain the settlement of our Claims Group and deny the claim.

Mr. Charnovitz had been employed as a GS-345-12 program analyst in the International Labor Affairs Bureau (ILAB), Office of Management, Administration and Planning, Department of Labor (DOL). He alleges that over a period of time he had been assigned additional duties which justified reclassifying his position to the GS-13 level through material modification.<sup>1/</sup> Mr. Charnovitz' supervisors in ILAB discussed the situation with a classification specialist from Operating Personnel Services (OPS), the personnel office which serviced ILAB. Apparently, the classification specialist advised them orally that the duties performed by

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<sup>1/</sup> DOL regulations define material modification as:

"The reconstitution of an occupied position at a higher grade as the result of the accretion (and performance by the employee) of higher level duties and responsibilities which are not the result of planned management action when the employee continues to perform the same basic function of the former position (as reflected in the employee's official position description of record) and the former position is administratively absorbed into the new one."

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Mr. Charnovitz at that time were those of a GS-13. Accordingly, on March 4, 1982, the associate deputy undersecretary of ILAB wrote a memorandum directing that the position occupied by Mr. Charnovitz be reclassified at the GS-13 level. Mr. Charnovitz alleges that this memorandum constituted a reclassification of his position. Therefore, he says he is entitled to backpay from March 4, 1982, to December 26, 1982, the date on which he was competitively promoted to a newly established GS-13 position.<sup>2/</sup>

The agency's administrative report presents a different view of the facts. The agency does not dispute the fact that both before and after the March 4, 1982, memorandum Mr. Charnovitz was performing duties which could be classified at the GS-13 level. However, the agency's report states that the technical determination of OPS was that the position occupied by Mr. Charnovitz could not be reclassified through material modification and that proper classification procedures required that a new GS-13 position be established. According to OPS, that new position could not be filled until after the reorganization of ILAB and had to be filled competitively.

Apparently, the views of OPS prevailed. Action on the March 4, 1982, memorandum directing the reclassification of Mr. Charnovitz' position was never completed. Instead, after the reorganization of ILAB, a new GS-13 position was established and approved. That position was advertised under competitive promotion procedures and on December 26, 1982, Mr. Charnovitz was selected.

Mr. Charnovitz argues that the associate deputy undersecretary of ILAB did have classification authority and, therefore, OPS was required to upgrade his position. He argues that the failure to do so within a reasonable period of time entitles him to backpay.

The record indicates that the deputy undersecretary of ILAB has reclassification authority. DLMS 4-104a. The deputy undersecretary is authorized to redelegate this authority in writing to the associate deputy undersecretary, but the record does not contain a copy of any such redelegation. DLMS 4-109. Even assuming, however, that

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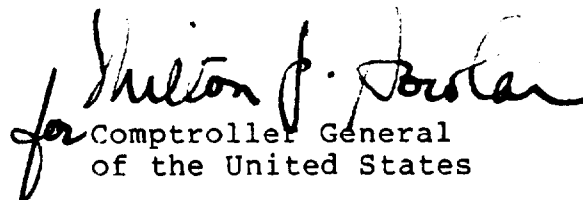
<sup>2/</sup> The record indicates that Mr. Charnovitz was temporarily promoted to a GS-13 position from May 16, 1982, to August 14, 1982.

the authority was properly redelegated, DOL regulations state that officials with classification authority must exercise this authority in accordance with published standards and the technical recommendation of the personnel organization servicing them. DLMS 4-106a. Disputes are apparently resolved by the Assistant Secretary for Administration and Management and the Director of Personnel Management. DLMS 4-108.

In this case, the Office of the Assistant Secretary for Administration and Management agreed with OPS that the position occupied by Mr. Charnovitz could not be reclassified. Instead, proper classification procedures required that after the reorganization of ILAB, a new GS-13 position be created and merit staffed.

In view of the above, we conclude that the March 4, 1982, memo from the associate deputy undersecretary of ILAB did not constitute a reclassification of the position occupied by Mr. Charnovitz because it was not in accord with the technical classification recommendations of the appropriate personnel officials. Accordingly, there is no entitlement to backpay. Gordon L. Wedemeyer, B-200638, October 9, 1981; Patrick Johnson, B-212086, November 29, 1983; and Paul Monteleone, B-188388, February 23, 1981. An employee is entitled only to the salary of the position to which he is assigned, regardless of the duties performed. The Supreme Court has held that there is no monetary remedy for periods of wrongful classification. United States v. Testan, 424 U.S. 392 (1976).

Accordingly, we sustain our Claims Group denial of Mr. Charnovitz' claim.

  
for Comptroller General  
of the United States