

DOCUMENT RESUME

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[Detail to Higher Grade Position]. B-185782. July 21, 1977. 5 pp.

Decision re: George T. Smith-Winnes; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Army.

Authority: 31 U.S.C. 71a. 55 Comp. Gen. 539. 55 Comp. Gen. 785. 53 Comp. Gen. 216. B-183086 (1977). B-187287 (1977).

The protester appealed a denial of his claim for a retroactive temporary promotion. To the extent that the employee performed duties on the detail before the higher grade position had been classified, the claim could not be paid as an employee cannot be promoted to an unclassified position. The employee could be awarded a temporary promotion and backpay for the period from the first day following the completion of 6 months after the position was reclassified until the termination of the detail. (Author/SC)

*Hubert
Civ. Serv.*

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DECISION



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

FILE: B-185782

DATE: July 21, 1977

MATTER OF: George T. Smith-Winnes - Detail to
higher grade position

- DIGEST: 1. Employee claims backpay for detail to higher grade position. To extent employee performed duties on detail before higher grade position had been classified, claim may not be paid since employee cannot be promoted to unclassified position.
2. Employee was detailed to higher grade position under Civil Service Commission regulations in effect prior to September 1, 1968. Since no significant difference exists between such regulations and those in effect at time of decision in Turner-Caldwell, 55 Comp. Gen. 539 (1975), employees detailed under the regulations applicable prior to September 1, 1968, are entitled to a temporary promotion beginning on the first day following completion of 6 months on detail to classified position. Thus employee detailed to position at time of its classification on February 27, 1968, may be awarded temporary promotion and backpay from August 27, 1968, until termination of detail.

This action concerns an appeal by Mr. George T. Smith-Winnes from the denial by our Claims Division of his claim for a retroactive temporary promotion. Mr. Smith-Winnes, a civilian employee of the Department of the Army, contends that although he was officially appointed to a grade GS-13 position, he actually performed the duties of a grade GS-14 position from March 1, 1967, until he was appointed thereto on November 29, 1970.

The record indicates that on March 1, 1967, the organizational unit to which Mr. Smith-Winnes had been appointed as a Program Analyst, grade GS 301-13, was disestablished, and he was

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detailed to an unclassified position at grade GS 301-13 in the newly-activated United States Army Communications Systems Agency (USACSA), Fort Monmouth, New Jersey. On April 13, 1967, USACSA General Order No. 3 effected certain duty appointments to provide supervisors for the major elements of the command on an interim basis pending approval of a table of distribution and allowances for the organization. Pursuant to that order, Mr. Smith-Winnes was assigned to an unclassified position as Chief of the Review and Analysis Division, Office of the Comptroller and Director of Programs, USACSA. The table of distribution and allowances was tentatively approved on June 9, 1967, with an effective date of March 1, 1967, and listed the position as Chief, Review and Analysis Division as grade GS 345-14. This position was ultimately officially classified effective February 27, 1968, with the title of Program Analysis Officer, grade GS 345-14. No immediate appointment was made to that position, however, and it remained vacant until Mr. Smith-Winnes was appointed thereto effective November 29, 1970. In addition to the above general order assigning Mr. Smith-Winnes to the duties of the Division Chief, the record contains several personnel actions and orders, including USACSA Special Order No. 35 dated December 1, 1967, assigning him to duties as Acting Chief, Review and Analysis Division.

Mr. Smith-Winnes predicated his initial claim upon our decision in 53 Comp. Gen. 216 (1973), in which we held that when a position is reclassified to higher grade, an agency must within a reasonable time after the date of final position reclassification, either promote the incumbent, if he is qualified, or remove him. Noting that prior to March 1, 1967, he was Chief, Review and Analysis Branch, grade GS 301-13, Mr. Smith-Winnes contends that the grade GS 345-14 position, Chief, Review and Analysis Division, merely represents an upward reclassification of the position in which he was the incumbent. However, in a memorandum dated December 12, 1974, the civilian personnel officer at Fort Monmouth contends that when the USACSA was activated, a new and different position was allocated at the grade GS-14 level, and that Mr. Smith-Winnes' former position was not reclassified. In addition, this memorandum states that Mr. Smith-Winnes was detailed to the position of Chief, Review and Analysis Division.

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This matter was referred to our Claims Division which, by Settlement Certificate No. 2-2397357 dated November 24, 1975, denied the claim on the grounds that the allocation of the higher grade position represented the creation of a new position, as distinguished from an upward reclassification of Mr. Smith-Winnes' former position. In reaching that result, the Claims Division based its determination on the fact that a new agency, USACSA, was activated, that all positions therein were initially tentative, and that the grade GS-14 position reflected an expansion of duties and a different career series. In addition, the Claims Division determined that Mr. Smith-Winnes had merely been detailed to the higher grade position, rather than officially appointed there, concluding that he was therefore entitled to compensation only for the lower grade office.

In appealing the Claims Division settlement, Mr. Smith-Winnes contends that it is immaterial whether the grade GS-14 position was created as a new position, or resulted from a reclassification of his former office. It is his view that since he performed the duties of the position, he is entitled to a retroactive promotion thereto. The applicability of our decision in 53 Comp. Gen. 216, supra, is, however, limited to situations in which an incumbent's position has been upgraded, as distinguished from a detail to a newly classified higher grade position. Based upon the fact that a new agency was activated, and the fact that all positions therein were not immediately allocated, we concur with the view of the Claims Division that the grade GS-14 position in question was an allocation of a new position, rather than an upgrading of a former position. Accordingly, our decision in 53 Comp. Gen. 216 is not applicable here.

We note, however, that the employing agency concedes that Mr. Smith-Winnes was detailed to the position of Chief, Review and Analysis Division. This conclusion is supported in the record by the general orders and personnel actions noted above, which assigned Mr. Smith-Winnes to the duties of the Division Chief. Further, the effect of the settlement by our Claims Division was to determine that the claimant was detailed to the higher grade position, but that under the then-applicable decisions of this Office, no relief could be provided. We therefore conclude that Mr. Smith-Winnes was in fact detailed to the position of Chief, Review and Analysis Division, which was subsequently allocated to grade GS-14.

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The Claims Division settlement, however, was issued prior to our decisions concerning details in Matter of Everett Turner and David L. Caldwell, 55 Comp. Gen. 539 (1975) and Matter of Marie Grant, 55 Comp. Gen. 785 (1976). In Turner-Caldwell, we held that, by reason of applicable Civil Service Commission regulations, employees detailed to higher grade positions for more than 120 days without Commission approval, are entitled to retroactive temporary promotions with backpay for the period beginning with the 121st day of the detail until the detail is terminated. Subsequently, in Grant, we ruled that the Turner-Caldwell decision applied retroactively to extended details to higher grade positions, provided that the detail regulations in chapter 300, Federal Personnel Manual, in effect at the time of the detail, are substantially the same. Also the claim must be filed within the statute of limitations applicable to claims cognizable by our Office, as set forth in 31 U.S.C. 71a. We recently reconsidered our decisions in Turner-Caldwell and Grant at the request of the General Counsel of the Civil Service Commission, and have affirmed our decisions in those cases. Matter of Reconsideration of Everett Turner and David L. Caldwell, B-183086, March 23, 1977, 56 Comp. Gen. ____.

The Civil Service Commission detail regulations applicable until September 1, 1968, authorized 6-month details without Commission approval. Effective September 1, 1968, the Commission confined the maximum period of details to 120 days without its prior approval. Otherwise, there is no significant difference in the applicable regulations with respect to Turner-Caldwell. We therefore conclude that employees assigned to details under the regulations applicable prior to September 1, 1968, are entitled to a temporary promotion beginning on the first day following completion of 6 months on detail to an established position.

Our decision in Turner-Caldwell involved temporary details to positions which had been classified. It is, however, well established that an employee may not be promoted to a position which has not been classified. Thus, the remedy of temporary promotion and backpay prescribed in Turner-Caldwell is not available where an employee has been detailed to or has performed the duties of a higher grade position which has not been classified. Matter of Hubert J. Buteau, B-187267, May 13, 1977.

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In the present case, Mr. Smith-Winnes' claim was initially filed with our Transportation and Claims Division (now Claims Division) on January 1, 1975. At that time, 31 U.S.C. 71a provided that claims cognizable by our Office must be received within 10 years from the date the claim first accrued. Thus, the present claim was initially filed in a timely manner. As noted above, there is no significant difference in the applicable civil service regulations, thus satisfying the first prerequisite set forth in Grant to retroactive application of Turner-Caldwell. Likewise, since this claim was timely under the appropriate statute of limitations, the other condition of Grant is met and this matter is properly before us for reconsideration.

As noted above, it is undisputed that Mr. Smith-Winnes was detailed to the position of Chief, Review and Analysis Division, thus rendering the principles enunciated in Turner-Caldwell applicable to this case. However, under the rule in Buteau, such principles do not apply unless and until the higher grade position has been officially classified. The present case, the position of Program Analysis Officer, grade GS-14 to which Mr. Smith-Winnes was detailed, was not classified until February 27, 1968. Thus, the amount of time prior to that date may not be included in the period for which the employee may be detailed without requiring a temporary promotion. Since, however, we hold that employees detailed to higher grade positions under the Civil Service Commission regulations applicable prior to September 1, 1968, are entitled to a temporary promotion and backpay beginning on the first day following completion of 6 months on detail to an established position, the claim submitted by Mr. Smith-Winnes may if otherwise proper, be paid from August 27, 1968, until the detail terminated on November 29, 1970.

Accordingly, settlement will be made in the amount found due.

R. F. K. 114
Deputy Comptroller General
of the United States