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DECISION



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

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FILE: B-193555

DATE: January 26, 1979

MATTER OF: Donald P. Konrady - [Claim for retroactive temporary promotion and backpay]

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- DIGEST: 1. A civilian employee of the United States Air Force, holding a Communications Control Technician, GS-9 position was appointed Base Communications Security Officer, ~~the duties and responsibilities of which were not included in his job description.~~ Since the position of Communications Security Officer was not established or classified for civilian personnel at the installation where the claimant was employed he is not entitled to a retroactive temporary promotion with accompanying backpay under our Turner-Caldwell decision, 55 Comp. Gen. 539 (1975) affirmed 56 Comp. Gen. 427 (1977). The crucial aspect under that decision is that ~~backpay~~ ^{backpay} may be allowed only if the employee is detailed for an excessive amount of time to a position which is established and classified.
2. When a claimant's position is revised to include duties and responsibilities he has been performing resulting in an assignment of a higher grade, the claimant is not entitled to backpay since a reclassification action upgrading a position may not be made retroactively effective. United States v. Testan, 424 U.S. 392 (1976).

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This action is in response to a letter from Mr. Donald P. Konrady, a civilian employee of the United States Air Force, which constitutes an appeal from a settlement issued by our Claims Division. On October 12, 1978, Certificate of Settlement No. Z-2773927, was issued disallowing Mr. Konrady's claim for a retroactive temporary promotion with backpay on the grounds that he was not detailed to an established position classified at a higher grade in excess of 120 days.

On March 9, 1973, Mr. Konrady, a Communications Control Technician, GS-392-9, at Robins Air Force Base, Georgia, was

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appointed Base Communications Security (COMSEC) Officer. At that time the duties and responsibilities of the COMSEC Officer were not included in his job description. Prior to Mr. Konrady's appointment the position of COMSEC Officer was designated as a full-time job and normally filled by a member of the Air Force. The military authorization was cancelled when the incumbent retired. On May 26, 1977, Mr. Konrady's position was revised to include the duties and responsibilities of the COMSEC Officer resulting in his position being upgraded to Communications Security Specialist, GS-392-11. Mr. Konrady's promotion became effective June 26, 1977. Mr. Konrady contends that he is entitled to a retroactive temporary promotion with backpay for the period July 9, 1973, through June 25, 1977, for two reasons. First, an identical position to which he was appointed exists at the GS-11 level at Scott Air Force Base, Illinois. Second, the only reason an established position did not exist was because management did not comply with Civil Service regulations.

There is no doubt that during the time period in question Mr. Konrady performed the duties and responsibilities of the COMSEC Officer. However, it is a well established rule that an employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties he performs. See: B-189663, November 23, 1977; 55 Comp. Gen. 515 (1975). As we stated in Edward Rothenberg, B-187234, December 8, 1976, the proper course of action for an employee to follow in cases of alleged improper position classification is to appeal the classification to the Civil Service Commission. See 5 C.F.R. Part 511, Subpart F (1977). The fact that a position is reclassified to a higher level and Mr. Konrady was promoted does not mean that the higher salary rate would be retroactively effective, as an employee is entitled to the salary of the position to which he is appointed even though he may perform the duties of a higher grade position. This rule was recently upheld by the Supreme Court in United States v. Testan, 424 U.S. 392 (1976).

Mr. Konrady's claim was considered by this Office and the Air Force under the decision in Matter of Everett Turner and David L. Caldwell, 55 Comp. Gen. 539 (1975), affirmed 56 Comp. Gen. 427 (1977). We held therein that employees detailed to higher grade positions for more than 120 days, without Civil Service 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

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Matter of Marie Grant, 55 Comp. Gen. 785 (1976) we ruled that the Turner-Caldwell decision applied retroactively to extended details to higher grade positions. In the matter of Reconsideration of Turner-Caldwell, 56 Comp. Gen. 427 (1977), we discussed specifically the relationship of the rule stated therein to the general rule that an employee is entitled only to the salary of the position to which he is properly appointed. We held that, in the limited circumstances of detail in excess of 120 days an employee could receive backpay, but that rule was predicated upon the employee being detailed, formally or informally to an existing position. See 56 Comp. Gen. at 630. Thus, although an employee may not be allowed backpay for the performance of duties which should be classified at a higher grade, he may be granted backpay if he is detailed to a higher grade position and retained in that detail for a period in excess of the time permitted in the mandatory regulations of the Civil Service Commission.

The Civil Service Commission has promulgated implementing guidance concerning Turner-Caldwell, *supra*, in Bulletin No. 300-40 dated May 25, 1977, subject: GAO Decision Awarding Backpay for Retroactive Temporary Promotions of Employees on Overlong Details to Higher Graded Jobs (B-183086). Paragraph 4 of that bulletin states: "For purposes of this decision, the position must be an established one, classified under an occupational standard to a grade or pay level." (Emphasis in original.) This statement emphasizes that the crucial aspect in the Turner-Caldwell line of cases is that the position or duties to which an employee is detailed be those of an established and classified position. See also, Matter of Ross and Squire, 57 Comp. Gen. 536 (1978); and Matter of Patrick J. Fleming, B-191413, May 22, 1978.

We have been advised by the Department of the Air Force that until May 1977 there was no established position within Mr. Konrady's organization to which he could have been detailed. While it is unfortunate that an established position did not exist because management may not have complied with Civil Service Commission regulations as Mr. Konrady contends, it is noted that he could have appealed the classification of his position to the Commission. Matter of Willie W. Cunningham, 55 Comp. Gen. 1062 (1976).

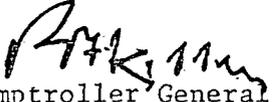
It should be noted that prior to Mr. Konrady's appointment the position of COMSEC Officer was normally filled by a member of

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the Air Force. Even if the military authorization for this position had not been cancelled when the incumbent retired, Mr. Konrady would still not be eligible for backpay. In that particular situation we have held that employees temporarily assigned to higher grade military positions may not be given retroactive temporary promotions to the equivalent civilian grade. B-183086, July 12, 1977.

For the reasons stated, there is no authority under Turner-Caldwell, supra, to grant Mr. Konrady retroactive temporary promotion and backpay.

Accordingly, Mr. Konrady's claim is denied and the action taken by our Claims Division is sustained.


Deputy Comptroller General
of the United States