

**DECISION**



17381  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-199834, B-199835, DATE: March 17, 1981  
B-199836, B-199842

MATTER OF: Norman C. Bates, et al. -- [Claims for  
additional compensation on change from  
Wage Grade to General Schedule positions]

**DIGEST:**

Four Wage Grade employees entered employee development program and accepted lower-paying General Schedule (GS) positions. They were given salary retention under 5 U.S.C. § 5337 (1976). The employees are not entitled to two-step increases incident to change of position since this was not a "promotion." Upon subsequent promotions to higher GS position, their rate of pay was properly based on two-step increase from lower GS position or existing rate of pay, if higher. Their claim for a two-step increase above retained rate of pay is denied.

The issue in this case is whether four employees who moved from Wage Grade to lower-paying General Schedule positions, received salary retention, and were later promoted, are entitled to "two-step" increases in connection with each personnel action. We hold that they are not so entitled and that their pay has been properly set under the provisions of 5 U.S.C. §§ 5334(b) and 5337 (1976).

This decision is in response to appeals of Claims Group settlements denying the claims of Messrs. Norman C. Bates, Chesley Brent Johnson, Robert G. Scott, and Larry P. Woodland for additional compensation incident to their movement from Wage Grade positions to General Schedule positions and their subsequent promotions within the General Schedule.

All four employees are employed at the Hill Air Force Base, Utah, and all four were "promoted" in 1977 or 1978 from Wage Grade to General Schedule positions. The employees were entering an employment development program,

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and since the rate of pay in the General Schedule position (grade GS-7, step 10) was less than the rate each received in their Wage Grade positions, they were accorded salary retention under 5 U.S.C. § 5337 (1976). After 1 year in grade, each employee was promoted to grade GS-9. It is the contention of these employees that, upon "promotion" from the Wage Grade system to the General Schedule system and upon later promotion within the General Schedule, they were entitled to "two-step" increases citing the decision in Clark v. United States, 599 F.2d 411 (Ct. Cl. 1979).

Our Claims Group held that these employees underwent a change to lower grade or "demotion" from a Wage Grade to a General Schedule position and that the decision in Clark v. United States, supra, was therefore not applicable. Our Claims Group went on to state that their rates of pay were properly set in accordance with the provisions of 5 U.S.C. § 5334(b) and that they are not entitled to a two-step increase from their retained rates of pay.

On appeal the employees argue that they were not "demoted" but were instead "promoted", citing 5 C.F.R. § 531.202(h), that they were improperly denied two-step increases on each promotion citing Clark v. United States, supra, and that salary retention was the incentive to get qualified people to apply for these General Schedule positions with greater responsibilities and duties but less pay.

As to whether the movement from Wage Grade to General Schedule positions was a "promotion" or "demotion", we note that 5 C.F.R. § 531.202(h) (1978) which was cited by these employees defines a promotion as a change (1) from one GS grade to a higher GS grade or (2) from a lower rate paid under an authority other than the General Schedule to a higher rate within a General Schedule grade. The initial movement of these employees to the General Schedule did not meet the second part of the above definition since the employees moved to lower-paying General Schedule

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positions. As pointed out by our Claims Group, if these employees had not been entitled to salary retention, they would have suffered a loss in pay of \$1,000 to \$2,000 per year upon movement from their Wage Grade to their General Schedule positions.

We are not sure why the agency characterized this personnel action as a "promotion", but we note that on each Standard Form 50 issued to the employees there appeared the following statement: "This is considered a promotion only insofar as pay is considered." Therefore, since these employees were moving to lower-paying positions in the General Schedule we cannot consider such actions to be promotions for purposes of applying the two-step increase rule.

Since these employees were moving into positions incident to participation in an employee development program, they were accorded the benefits of salary retention under 5 U.S.C. § 5337 (1976). Each employee was paid at a "retained rate" for a period of up to 2 years. It is this salary rate from which these employees claim a two-step increase upon their subsequent promotion to grade GS-9.

Our Office has held that where an employee is demoted, received salary retention, and is later repromoted, the two-step increase for computing the subsequent promotion must be based upon the reduced grade. See B-172195(19), May 16, 1974; and B-178909, August 6, 1973. Salary retention under section 5337 did not carry with it grade retention, and, as pointed out by our Claims Group, the grades of these employees were actually reduced to grade GS-7, step 10. The purpose of salary retention was explained in the Federal Personnel Manual Supplement 990-2, Book 531, S5-1a, where it states, in pertinent part,

"\* \* \* The law is based on the principle that there should be a financial cushion for the employees concerned where through no fault of their own they must be demoted

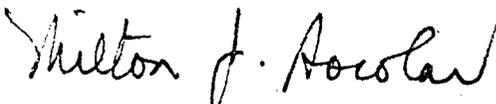
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to lower grades. The 2-year period recognizes the personal hardship and morale factors involved in these demotions and provides a transitional period during which it is expected that special efforts will be made to assign the employees to higher grade duties."

As pointed out by our Claims Group, 5 U.S.C. § 5334(b) provides that upon promotion employees receiving salary retention under section 5337 are entitled to a two-step promotion above the rate they would be receiving if salary retention were not applicable, or their existing rate of basic pay, if higher. For these four employees, a two-step promotion above grade GS-7, step-10 was less than their existing rates (retained rate), so these employees had their pay rates in grade GS-9 set on the basis of their existing rates. We find that the pay of these employees was properly fixed in accordance with the provisions of 5 U.S.C. § 5334(b). B-172195(19), supra; and B-178909, supra.

The claimants place great reliance on the decision in Clark v. United States, supra. The Court of Claims held that employees who are "promoted" from positions in the prevailing wage system to positions under the General Schedule are entitled to a two-step increase. In defining a "promotion", the court cited 5 C.F.R. § 531.202(h)(2) (cited above) which refers to movement from a lower rate to a higher rate. See Clark v. United States, supra, footnote 5. As we pointed out above, these four employees moved from prevailing rate (Wage Grade) positions to lower-paying General Schedule positions, and such changes may not properly be considered as promotions for the purposes of section 5334(b) or the Clark decision.

Accordingly, we sustain our Claims Group's denial of the four claims for additional compensation.

  
Acting Comptroller General  
of the United States