

DECISION



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PLM-1
Schwimer

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

FILE: B-201767

DATE: June 24, 1981

MATTER OF: Melba Campbell - Retroactive Temporary
Promotion and Backpay

DIGEST: Employee who was detailed to higher grade position on September 29, 1978, is entitled to a retroactive temporary promotion and backpay beginning 121st day after the detail. FPM Bulletin 300-48, effective February 15, 1979, delegated authority to agencies to detail employees to higher-grade positions for 240 days without prior approval of the Office of Personnel Management. Employee is entitled to backpay up to effective date of Bulletin. On and after effective date entitlement to backpay is governed by Bulletin's provisions.

This decision is in response to the appeal of Ms. Melba Campbell of our Claims Group settlement denying her claim for backpay based on our Turner-Caldwell, decisions, 55 Comp. Gen. 539 (1975), affirmed at 56 id. 427 (1977). Those decisions hold that if an employee is detailed to a position classified at a higher-grade for a period in excess of 120 days without prior Civil Service Commission (now Office of Personnel Management) approval, he or she is entitled to a retroactive temporary promotion and backpay for such period provided all qualifications and other requirements for such a promotion are met. See paragraph 8C, FPM Bulletin 300-40, May 25, 1977.

Ms. Campbell, a payroll technician, GS-06, for the Department of the Army says that she performed the duties of the position of payroll supervisor, GS-08, from September 29, 1978, to December 30, 1979, and that she is entitled to the higher rate of pay for the entire period. The record shows that she was informally detailed to the GS-08 position from September 29, 1978, to November 18, 1978. On November 19, 1978, she was officially detailed to the same position until January 13, 1979. After the official detail expired, Ms. Campbell continued to perform the duties of the payroll supervisor

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position and was given a temporary promotion to that position from February 11, 1979, until April 11, 1979. After the temporary promotion expired she was again informally detailed to the same position until she received a second temporary promotion effective June 17, 1979. This promotion was effective until the date of her claim. The Department of the Army allowed Ms. Campbell's claim for a retroactive temporary promotion and backpay beginning on the 121st day after she was informally detailed to the payroll supervisor GS-08 position up until the date of her temporary promotion on February 11, 1979. However the Department of the Army and our Claims Group denied the rest of her claim on the basis of FPM Bulletin 300-48, March 19, 1979. We uphold this determination for the reasons discussed below.

In the recent case of Joyce R. Morrison, 59 Comp. Gen. 662 (1980), this Office considered the effect of FPM Bulletin No. 300-48, issued by the Office of Personnel Management. The bulletin is dated March 19, 1979, and states that it is effective February 15, 1979. The Bulletin states that agencies are delegated the authority to detail employees to higher grade positions for up to 1 year during major reorganizations as determined by the agency, and for 240 days in other circumstances, without prior OPM approval for the second 120 days. Thus, FPM Bulletin 300-48 must be considered in light of the nature of the remedy provided by our Turner-Caldwell decisions for over-long details to higher-grade positions. The remedy is a retroactive temporary promotion for the detailed person beginning on the 121st day of the detail. In the circumstances of the Morrison case, we concluded that where a continuing detail had exceeded 120 days without prior CSC or OPM approval, and a right to backpay under Turner-Caldwell had vested prior to the Bulletin's effective date, the employee is entitled to backpay up to the effective date of the Bulletin. This is so because the key to Turner-Caldwell is the lack of authority by the agency to detail beyond established limits. However, entitlement to backpay after the effective date of the Bulletin must be based on the new broader limits as established. See also Bernard E. Richert, Jr., B-196180, February 17, 1981.

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Therefore the Department of the Army correctly granted a retroactive temporary promotion and backpay on the basis of FPM Bulletin 300-40 beginning on the 121st day of the detail. However, after the effective date of FPM Bulletin 300-48, February 15, 1979, the agency had the authority to detail Ms. Campbell to the higher-grade job for an additional 120 days without Office of Personnel Management approval. Therefore, Ms. Campbell is not entitled to a retroactive temporary promotion and backpay for the time period from April 12, 1979, to June 15, 1979.

Accordingly, our Claims Group's settlement is upheld.

A handwritten signature in cursive script that reads "Milton J. Rowland".

Acting Comptroller General
of the United States