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**DECISION**



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

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**FILE:** B-195235

**DATE:** July 28, 1981

**MATTER OF:** Richard E. Kierstead - Backpay - Detail  
from Developmental to Full Performance  
Position

**DIGEST:**

NOAA employee assigned to "developmental" Administrative Officer, GS-11, claims backpay under Turner-Caldwell for detail to "full performance" Administrative Officer, GS-12, from October 31, 1971, to February 3, 1974. Classification Specialist evaluated employee's duties and responsibilities at GS-12 on December 27, 1972, and these were basically the same as those of the classified GS-12 position. Claim is denied from October 31, 1971, to December 27, 1972, because evidence is insufficient to prove detail. Detail is sufficiently proved from December 27, 1972, to February 3, 1974, and backpay is allowed beginning on the 121st day of that detail.

Mr. Richard E. Kierstead has appealed our Claims Division Settlement Number Z-2795336, which denied his [claim for a retroactive temporary promotion and backpay] based on Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed, 56 Comp. Gen. 427 (1977). This decision holds that if an employee is detailed to a position classified in higher grade than his or her assigned grade for a period in excess of 120 days without Civil Service Commission (CSC) approval, he or she is entitled to a retroactive temporary promotion and backpay for such period provided the employee would have met all qualifications and other requirements for such a promotion.

Mr. Kierstead was employed as an Administrative Officer, GS-341-11, at the North Atlantic Fisheries Research Center, National Oceanic and Atmospheric Administration (NOAA), Boothbay Harbor, Maine. In the early fall of 1971 he was offered and accepted a

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B-195235

similar position at NOAA's MARMAP Program Field Coordination Office, Narragansett, Rhode Island, apparently a new installation then in the planning stages. Subsequently, on September 29, 1971, two positions were classified for use at the Narragansett office. One was a "full performance" position, Administrative Officer, GS-341-12, Position No. NM0769, which was designated vacant. The other was a "developmental" position, Administrative Officer, GS-341-11, Position No. NM0770, which designated Mr. Kierstead as the prospective incumbent. The description for the grade GS-11 position provided:

"Above named incumbent [Mr. Kierstead] is to be detailed to the position indicated in item 9 above [the grade GS-12 position] at his current grade of GS-11. The position is established at the full-performance level of GS-12 as described in position description number NM0769; the duties to be performed at the GS-11 level remain essentially unchanged from the GS-12. However, supervisory controls over the position and the degree of independent authority and activity are modified to be consistent with the GS-11 level. More specific guidance and direction is provided in terms of approaches to assignments, suggested courses of action, and objectives. Work is reviewed for adequacy, consistency, compliance with established policy and precedent, and objectives met."

On October 31, 1971, Mr. Kierstead was reassigned from his grade GS-11 position at Boothbay Harbor to the "developmental" position, Administrative Officer, GS-341-11, Position No. NM0770, at Narragansett. He occupied this position until February 3, 1974, when he was promoted to the "full performance" position, Administrative Officer, GS-341-12, Position No. NM0769.

B-195235

Mr. Kierstead contends that he performed at the "full performance" level - that he discharged the duties and responsibilities of the grade GS-12 position - all of the time he occupied the grade GS-11 position at Narragansett, October 31, 1971, to February 3, 1974. He alleges that the grade GS-11 position was established only because of a "promotion freeze," that his employing activity proposed to promote him to grade GS-12 at the time of his reassignment but was prevented from doing so because of the "freeze," and that he accepted the grade GS-11 position with the understanding that he would be promoted to grade GS-12 when the "freeze" was lifted, but this did not occur.

Charts and memorandums in the record support Mr. Kierstead's contention that his employing activity had proposed his promotion at the time of his reassignment. Moreover, his promotion was recommended several times in 1972 after his reassignment, but these recommendations were not acted upon at higher levels - apparently because there was some question as to the proper grade of the "full performance" position.

On January 2, 1973, Mr. Kierstead was again recommended for promotion. Accompanying this recommendation were (1) a proposed revised description for Administrative Officer, GS-341-12, Position No. NM0769, and (2) a position classification evaluation report dated December 27, 1972. This report resulted from an analysis of Mr. Kierstead's position by a Personnel Staffing and Classification Specialist from a higher eschelon. It indicates that the duties and responsibilities Mr. Kierstead was then performing were properly classifiable as Administrative Officer, GS-341-12. Apparently as a result of this report, Mr. Kierstead was finally promoted more than a year later, on February 3, 1974, to the "full performance" position, Administrative Officer, GS-341-12, Position No. NM0769.

B-195235

To decide Mr. Kierstead's claim we look first at the period from October 31, 1971, the date he was transferred to the grade GS-11 "developmental" position, to December 27, 1972, the date of the position classification evaluation report. We hold that for this period there is insufficient evidence in the record to establish beyond reasonable doubt that he discharged the duties and responsibilities of the grade GS-12 position with the necessary degree of authority and freedom from supervision. Therefore, he has not proved that he was detailed to a classified position in higher grade as required by Turner-Caldwell, and he is not entitled to the relief provided thereby. Vernon P. Humphries, B-194890, March 28, 1980; George Quintal, B-194745, April 8, 1980.

Mr. Kierstead complains that our Claims Division did not research his claim sufficiently and that it should have contacted one of his supervisors for additional proof. However, claims are settled by the General Accounting Office only on the basis of the written record created by the Government agency concerned and by the claimant. The burden is on the claimant to establish the liability of the United States and his right to payment. If he believes there is evidence available which supports his claim it is his responsibility to obtain and submit it in writing. 4 C.F.R. § 31.7.

There remains to be considered the period of Mr. Kierstead's claim from December 27, 1972, the date of the evaluation report, to February 3, 1974, the date he was promoted. As has been mentioned this report indicates the Classification Specialist evaluated his duties and responsibilities at that time at the grade GS-12 level. The issue then is whether these duties and responsibilities were essentially those of the classified grade GS-12 position or whether they were different, unclassified ones. During the period of this claim several revisions of the description for the grade GS-12 position were proposed, but the record does not disclose that any

B-195235

of these revisions was ever officially adopted. Moreover, an analysis of these proposed revisions, the original grade GS-12 position description, and the evaluation report leads us to believe that while some changes had occurred since the establishment of the position, these were not significant enough to alter its classification and that the position evaluated by the Classification Specialist at grade GS-12 was basically the same as the classified "full performance" position, Administrative Officer, GS-341-12, Position No. NM0769. Of particular significance we think is the fact that the Classification Specialist found with regard to the degree of authority and freedom from supervision - the factors which distinguished the grade GS-12 position from the grade GS-11 - that Mr. Kierstead was functioning at the grade GS-12 level.

In view of the foregoing, we hold that, within the purview of Turner-Caldwell, Mr. Kierstead was detailed to the classified "full performance" position, Administrative Officer, GS-341-12, Position No. NM0769, from December 27, 1972, to February 3, 1974, and that he is entitled to a retroactive temporary promotion and backpay beginning on the 121st day of that detail.

In regard to Mr. Kierstead's inquiry as to his right of further appeal, decisions of the Comptroller General are binding on executive agencies of the United States. 54 Comp. Gen. 921, 926 (1975). However, independent of the jurisdiction of this Office, the United States Court of Claims and District Courts have jurisdiction to consider certain claims against the Government if suit is filed within 6 years after the claim first accrued. See 28 U.S.C. §§ 1346(a)(2), 1491, 2401, and 2501 (1976).



Acting Comptroller General  
of the United States