

DECISION



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

60473

FILE: B-185539

DATE: FEB 4 1976

MATTER OF: Edward G. Worosila - Retroactive position classification

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DIGEST: Employee's GS-11 position was reclassified administratively to GS-12 on January 17, 1975, incident to appeal by the employee. Reclassification of position with related pay increase may not be made retroactive other than as provided in 5 C. F. R. § 511.703.

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This action concerns an appeal by Mr. Edward G. Worosila, an employee of the Department of the Army, from the disallowance of his claim for retroactive pay as a result of a change in classification of his position from grade GS-11 to grade GS-12 as set forth in Settlement Certificate of November 6, 1975, issued by our Transportation and Claims Division (now Claims Division).

The facts were stated in the settlement action as follows:

"The record shows that you were employed as a Television Production Specialist, GS-1071-11, at the United States Military Academy (USMA). On October 15, 1974 you submitted an appeal of the classification of your position by the USMA Civilian Personnel Division, to be sent to the United States Army Civilian Appellate Review Agency. On January 17, 1975, the Department of the Army decided that your position should be classified as Audio-Visual Production Officer, GS-1071-12. Pursuant to this reclassification you were promoted from GS-11, step 10 to GS-12, step 6, effective February 9, 1975. You are claiming a retroactive pay adjustment on the grounds that for 4-1/2 years you performed duties which should have been classified at a higher grade."

Before a promotion for Mr. Worosila could be made retroactive there would have to be a position allocated in the higher grade. Here the position in question was not allocated until January 17, 1975. For the reasons set forth below the effective date of the position allocation may not be made retroactively.

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Under the provisions of 5 U. S. C. § 5105 (1970), the Civil Service Commission (CSC) has the authority and responsibility for the preparation and publication of standards for classification of positions subject to the General Schedule. Each agency is required by 5 U. S. C. § 5107 to place its positions unless otherwise provided in their appropriate class and grade to conform with the standards published by CSC. Section 5107 of title 5, United States Code, provides that subject to section 5337 of title 5 of the United States Code, actions of an agency under the authority of 5107 are the basis for pay and personnel transactions until changed by certificate of CSC. Under the provisions of 5 U. S. C. § 5110, CSC is required to review agency classification actions and correct such actions which are not in accord with published standards. The CSC correction certifications are binding on all administrative, certifying, payroll, disbursing, and accounting officials.

Additionally, 5 U. S. C. § 5112 provides:

"§5112. General authority of the Civil Service Commission.

"(a) Notwithstanding section 5107 of this title, the Civil Service Commission may--

"(1) ascertain currently the facts as to the duties, responsibilities, and qualification requirements of a position;

"(2) place in an appropriate class and grade a newly created position or a position coming initially under this chapter;

"(3) decide whether a position is in its appropriate class and grade; and

"(4) change a position from one class or grade to another class or grade when the facts warrant.

The Commission shall certify to the agency concerned its action under paragraph (2) or (4) of this subsection. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

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"(b) An employee affected or an agency may request at any time that the Commission exercise the authority granted to it by subsection (a) of this section and the Commission shall act on the request."

It is noted that agency and CSC determinations on classification actions are binding on this Office and we have no authority to alter such actions. The CSC is empowered to prescribe applicable regulations by 5 U. S. C. § 5115.

The Commission's regulations for position classification under the Act are set out in part 511 of title 5 of the Code of Federal Regulations, and 5 C. F. R. § 511.701 (1975), states that "The effective date of a classification action taken by an agency is the date the action is approved in the agency or a subsequent date specifically stated." With respect to appeals within an agency, 5 C. F. R. § 511.702 states that the effective date of a change in classification resulting from an appeal "is not earlier than the date of decision on the appeal and not later than the beginning of the fourth pay period following the date of the decision * * *." These regulations are amplified in Federal Personnel Manual chapter 511, § 7-1a, which states that "The agency may not make the [classification] action retroactively." See also FPM chapter 531, § 2-7(a); Dianish v. United States, 183 Ct. Cl. 702, 707-709 (1968). The only provision for a retroactive effective date in a classification action is when there is a timely appeal from classification action which resulted in a loss of pay and on appeal the prior decision is reversed at least in part. See 5 C. F. R. § 511.703.

With respect to compensation the general rule is that an employee is entitled only to the salary of the position to which actually appointed, regardless of the duties performed. Thus, in a reclassification situation, an employee who is performing duties of a grade level higher than the position to which he is appointed is not entitled to the salary of the higher level position unless and until the position is classified to the higher grade and he is promoted to it. B-180056, May 28, 1974. We have ruled that when a position once has been classified in accordance with regulations, an employee may not be promoted retroactively, even though the employing agency may subsequently reconsider its classification determination and reclassify the position upwards. B-183218, March 31, 1975; B-170500, October 29, 1970.

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Upon review we find no basis that would authorize this Office to determine that the effective date of the classification of Mr. Worosila's position can be made retroactively and accordingly the disallowance of his claim for retroactive pay is sustained.

R. F. Keller

Deputy Comptroller General
of the United States