

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20543

PLM-2
Browne
119435

FILE: B-204724

DATE: September 13, 1982

MATTER OF: John J. Kelly

DIGEST: An employee, who was granted a quality step increase while on temporary assignment to a higher grade position and was awarded backpay by a retroactive temporary promotion for entire period of such services may retain the step increase. The agency's subsequent action, cancelling the quality step increase under an agency regulation relating to backpay which prohibits the award of such an increase to an employee for work while on a temporary assignment, does not defeat the award in this case which was based primarily on services in his permanent position.

By letter of September 2, 1981, the Assistant Secretary for Personnel Administration, Department of Health and Human Services, requested an advance decision on the propriety of withdrawing a quality step increase previously awarded to Mr. John J. Kelly, an employee of the Social Security Administration. The issue in this case is whether a quality step increase once granted may be withdrawn when an employee subsequently files a claim for backpay for an overlong detail and departmental regulations governing backpay state that quality step increases effected during an overlong detail must be withdrawn. The answer is that the employee is entitled to the quality step increase.

Mr. Kelly, a GS-105-12 Social Insurance Specialist, received a quality step increase in March 1980 for his job performance for the period from March 1979 through March 1980. In November 1980 he initiated a claim for a retroactive temporary promotion to grade GS-13 for the period January 1 through October 17, 1980, for having performed the duties of a GS-105-13, Social Insurance Specialist. On February 26, 1981, the agency determined that he was entitled to the retroactive promotion for the entire period of the "detail" in accordance with a negotiated agreement between the agency and Local 1923

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of the American Federation of Government Employees. Thus, the employee served in the higher grade and was compensated for the service at the higher rate under a temporary promotion for the entire period of such service.

In processing Mr. Kelly's retroactive promotion the agency cancelled his quality step increase because receipt of a quality step increase while serving on a temporary promotion was considered a violation of Department of Health and Human Services policy and the Social Security Administration's Personnel Guides for Supervisors, SSA Guide 4-4, Back Pay for Overlong Details. Paragraph E, Part V, Chapter IV of SSA Guide 4-4 states:

"It is HEW policy that employees may not be granted quality step increases (QSI's) while they are performing temporary assignments such as under an overlong detail. Quality increases may be granted only in connection with sustained high quality performance in the employee's permanent position. Thus, any QSI effected during any of the term of an overlong detail must be withdrawn. The personnel office will initiate corrective action."

Mr. Kelly has objected to the cancellation of his quality step increase and the Assistant Secretary requests an answer to the following questions based on the above facts:

- "1. Is it proper to withdraw Mr. Kelly's quality step increase in connection with his overlong detail and retroactive temporary promotion?
- "2. Were we obliged to inform Mr. Kelly about the possible effects of filing a claim for backpay or the unfavorable consequences before a formal decision was rendered?
- "3. May Mr. Kelly or an employee withdraw a claim for backpay? If yes, when and under what conditions?"

We considered the effect of a retroactive temporary promotion on a quality step increase in Matter of Ponce, 8-192684, November 19, 1979. We held that once a quality step increase is duly awarded and put into effect, in the absence of a clear violation of statute or implementing regulations, the right to the increase vests.

The Social Security Administration's regulations governing quality step increases are found in SSA Guide 5-1, Chapter V. Part III of that regulation cites three criteria for awarding a quality increase:

- "1. Performance of the most important functions of the job at a level which substantially exceeds normal requirements so that when reviewed as a whole, total performance is of a high degree of effectiveness.
- "2. The employee's high degree of effectiveness has been sustained to the extent that it may be considered characteristic of his performance. The period of active service during which high quality performance should be sustained will vary. Normally, the minimum period should be longer for complex, high-level positions than for those primarily of routine tasks with short work cycles. Generally, high quality performance should have been observed for at least 6 months at the current grade for jobs composed primarily of routine tasks with short work cycles. This would normally apply to jobs from grades GS-1 through GS-6. Performance for more complex positions found at grade GS-11 and above should have been observed for at least 12 months at the current grade. For jobs in grades GS-7 to GS-10, a decision must be made based on the individual position requirements.
- "3. The high quality performance gives promise of continuing, i.e., has not

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been based on a special assignment or work situation, but is of such a nature as well as duration that, on the basis of past experience, it may be expected to continue."

In Ponce we quoted from a letter written to the Social Security Administration by the Pay Policy Division of the Civil Service Commission (now Office of Personnel Management) which discussed the same issue now raised by this request for a decision. The following specific question was asked the Commission:

"If in fact the award was made while the employee was on detail and the employee later files a claim for backpay because of the overlong detail to a higher grade, must the award be withdrawn before processing the retroactive temporary promotion?"

The answer given to that question was:

"No. The QSI, if properly granted, may not be withdrawn before the processing of a retroactive temporary promotion. The employee is awarded the QSI for previous work in the regular position as well as future work upon expected return to the regular position. The temporary promotion is merely an intervening period during which the employee is serving at a higher grade level."

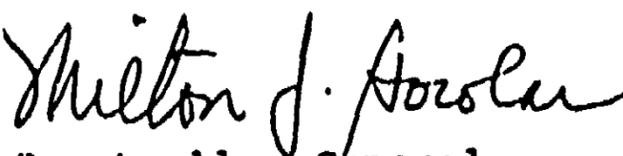
Under Ponce a quality step increase vests and cannot be withdrawn unless it was awarded in clear violation of the applicable statute and implementing regulations. In his submission, the Assistant Secretary argues that the quality step increase was not properly awarded in March 1980. He states that the recommendation for Mr. Kelly's quality step increase included references to his job performance while in the detailed position. He points out that SSA Guide 4-4 Back Pay for Overlong Details prohibits the award of a quality step increase while an employee serves on an overlong detail. He argues that this distinguishes Mr. Kelly's situation from the Ponce decision in that in Ponce the agency had no regulations which prohibited the award of a quality step increase while an employee served on a detail.

While the criteria quoted above from SSA Guide 5-1 may be read to preclude considering employees for quality step increases while they are detailed to a higher grade position, in our view the regulation does not clearly prohibit awarding such an increase in a situation such as in Mr. Kelly's case. Seen retrospectively, 3 months of the work on which his award was based were spent on a special assignment. However, there is no indication that at the time Mr. Kelly was first recommended for the award (9 weeks after his special assignment began), the agency realized Mr. Kelly had begun what was ultimately a period of service under a temporary promotion. The Office of Personnel Management, as indicated above, has taken the position that the employee is awarded a quality step increase for previous work in the regular position, as well as future work expected upon return, and raised no objection to the award of a quality step increase during a detail. Therefore, we find that under the Ponce decision the quality step increase vested at the time it was awarded to Mr. Kelly. Based on the facts of this case the award of the increase was not violative of the applicable statute, Office of Personnel Management regulations, or regulations found in SSA Guide 5-1, implementing quality step increases.

The issue remaining is whether the increase was improperly awarded in that it was granted in violation of SSA Guide 4-4, Back Pay for Overlong Details. SSA Guide 4-4 prohibits the granting of a quality increase for work while on a period of detail or retroactive temporary promotion. Here, the service for which the award was given was primarily, if not entirely, for work in the employee's regular position. In the circumstances, we are unable to conclude any violation of SSA Guide 4-4 occurred.

Accordingly, the quality step increase may not be cancelled. When the period for which the temporary promotion was awarded terminated and the employee returned to his permanent position, he was entitled to the benefit of the quality step increase.

Since we have determined that Mr. Kelly's quality step increase may not be cancelled, answers to the questions presented concerning an employee's right to withdraw a claim for backpay for an overlong detail are not relevant and, therefore, have not been considered.

for 
Comptroller General
of the United States