

PLM-I
H. DUNN

DECISION



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

[Claim for Backpay based on Alleged Entitlement to Retroactive Reclassification] ⁸⁸⁷⁴

FILE: B-191153

DATE: January 17, 1979

MATTER OF: Dee R. Geddes - Retroactive Reclassification -
Reconsideration

DIGEST: GS-11 employee, whose claim for backpay was disallowed because his position was not classified upward, now claims backpay on basis of unjustified or unwarranted personnel action as defined by Back Pay Act, 5 U.S.C. 5596 (1976), in that his agency allegedly removed GS-12 level duties from his position and his position would have been classified as GS-12 if agency and Civil Service Commission had followed proper procedures. Review shows that only question to be resolved is classification of employee's position. Disallowance of claim is sustained since we have no authority to consider propriety of classification actions.

This decision is in response to a request by Mr. Dee R. Geddes for reconsideration of our decision B-191153, May 15, 1978, which sustained the disallowance by our Claims Division of his claim for backpay on the basis of alleged entitlement to retroactive reclassification from GS-211-11 to GS-221-12 for the period July 1, 1971, to July 11, 1976, as an employee of the Department of the Air Force. The facts of this case were fully stated in our decision of May 15, 1978, and will not be repeated except as pertinent to the present discussion of the case.

The record shows that during the period in question the claimant was assigned to position number 0-40005-0 which was classified as Position Classification Specialist GS-221-11. The claimant alleged that during that period he performed the duties of position number 0-40003-0, which was classified as GS-221-12. Our decision of May 15, 1978, sustained the disallowance of his claim on the ground that since Mr. Geddes occupied only a GS-11 position during the entire period of his claim, and the facts as to whether the claimant performed GS-12 duties were in conflict, civil service regulations would not allow for a retroactive reclassification of the position in question. We also pointed out that the Supreme Court in United States v. Testan, 424 U.S. 392 (1976), in considering the issue of employees' entitlement to backpay when their positions were allegedly improperly classified, held that neither the Classification Act, now codified at 5 U.S.C. 5101-5115 (1976) nor the Back Pay

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Act, 5 U.S.C. 5596 (1976) creates a substantive right to backpay for the period of wrongful classification. Mr. Geddes requests reconsideration on the alternative theory that he has undergone an unjustified or unwarranted personnel action as defined by the Back Pay Act, supra. Specifically, Mr. Geddes alleges that the Department of the Air Force took several personnel actions to remove the GS-12 level duties from his position. In support of his allegation he points out that his position number was changed from 0-40005-0 to 0-40198-0, effective July 11, 1976. Later, in July 1977, Standard Form 50 accomplishing that action was corrected because there was a classification determination that there was enough substantive difference between the 2 descriptions as to constitute different positions, necessitating a reassignment. He also asserts that if his agency and the Civil Service Commission had followed the proper legal and procedural regulations, his position would have been graded at the GS-12 level effective December 7, 1975.

The Back Pay Act, supra, provides in pertinent part:

"(b) An employee of an agency who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority under applicable law or regulation to have undergone an unjustified or unwarranted personnel action that has resulted in the withdrawal or reduction of all or a part of the pay, allowances, or differentials of the employee—

"(1) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect an amount equal to all or any part of the pay, allowances, or differentials, as applicable, that the employee normally would have earned during that period if the personnel action had not occurred, less any amounts earned by him through other employment during that period; * * *

* * * * *

"(c) The Civil Service Commission shall prescribe regulations to carry out this section * * *."

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The Civil Service Commission has promulgated regulations pursuant to the above-quoted statute in Title 5, Code of Federal Regulations, Part 550, Subpart H. Section 550.802 of those regulations provides, in pertinent part:

"(c) 'An unjustified or unwarranted personnel action' means an act of commission (i.e., an action taken under authority granted to an authorized official) or of omission (i.e., nonexercise of proper authority by an authorized official) which it is subsequently determined violated or improperly applied the requirements of a nondiscretionary provision, as defined herein, and thereby resulted in the withdrawal, reduction, or denial of all or any part of the pay, allowances, or differential, as used here, otherwise due an employee. The words 'personnel action' include personnel actions and pay actions (alone or in combination)."

Section 550,803 provides, in pertinent part:

"(e) A personnel action, to be unjustified or unwarranted, must be determined by an appropriate authority to be improper or erroneous on the basis of either substantive merit or procedural defects."

As stated above, our decision of May 15, 1978, sustained the disallowance of Mr. Geddes' claim on the ground that he was not entitled to a retroactive classification to GS-12 with backpay under civil service regulations and the Supreme Court holding in Testan. Now Mr. Geddes requests backpay on the basis of an alleged unjustified or unwarranted personnel action. He asserts that his agency and the Civil Service Commission failed to follow non-discretionary procedures in processing the appeal of his position classification. He believes that he is entitled to GS-12 pay at least from December 7, 1975, when he filed an appeal with the Commission of his position classification, to July 11, 1976, when his agency removed the GS-12 level duties from his position.

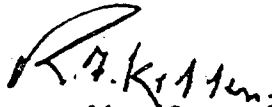
A thorough review of the records before us shows that Mr. Geddes was never detailed to a GS-12 position and he was assigned to a GS-11 position during the entire period of his claim. Therefore, the only question to be resolved is the proper classification of his position.

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Under the provisions of 5 U.S.C. § 5105 (1976), the Civil Service Commission 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 chapter 51 of title 5, United States Code, in their appropriate class and grade to conform with the standards published by the Commission. That section also provides that, subject to section 5337 of title 5, United States Code, actions of an agency under the authority of section 5107 are the basis for pay and personnel transactions until changed by certificate of the Commission. Under the provisions of 5 U.S.C. § 5110, the Commission is required to review agency classification actions and correct such actions which are not in accordance with published standards. The Commission correction certifications are binding on all administrative, certifying, payroll, disbursing, and accounting officials.

In view of the above we have no authority to consider the propriety of classification actions. B-190695, July 7, 1978, and B-191881, July 25, 1978. Accordingly, our decision of May 15, 1978, is affirmed.

The claimant asked the question of what other review processes are available in this matter. The claimant is directed to the provisions of 28 U.S.C. 1346 and 1491 (1976) concerning matters cognizable in the District Courts of the United States and in the United States Court of Claims.


Deputy Comptroller General
of the United States