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**DECISION**

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

FILE: B-191794

DATE: September 19, 1978

MATTER OF: [REDACTED] --Backpay - Erroneous  
Classification

DIGEST: Civilian employed by the Department of the Army, whose position classification was upgraded from grade GS-11 to grade GS-12 upon his application to the Civil Service Commission, is not entitled to retroactive award of grade GS-12 salary, since Federal employees are entitled only to the salaries of the positions to which they are actually appointed regardless of the duties performed, and neither the Classification Act, 5 U.S.C. §§ 5101-5115 (1976), nor the Back Pay Act, 5 U.S.C. § 5596 (1976), creates a substantive right to backpay during a period of claimed wrongful classification. United States v. [REDACTED] 424 U.S. 392 (1976).

This action is in response to correspondence received from Mr. [REDACTED], appealing Settlement Certificate Z-2770692 dated October 21, 1977, issued by our Claims Division disallowing his claim for a retroactive reclassification of his position from grade GS-11 to GS-12, and a retroactive promotion from grade GS-11 to grade GS-12 with backpay for the period September 5, 1972, to August 23, 1977, incident to his employment with the Department of the Army.

The facts of this case as revealed by official records available to this Office are as follows. On or about September 5, 1971, Mr. [REDACTED], along with 9 other individuals was appointed to the position of Attack Warning Officer, GS-301-11, with the United States Army Strategic Communications Command. He then began working at the Alternate National Warning Center, Olney, Maryland, one of three such centers.

All 10 employees were then provided with one year of training. Upon completion of the one-year training period, they were scheduled to assume full responsibilities of their positions at the grade GS-12 level. It appears that all 10 of the individuals concerned completed their training in a satisfactory manner and all were recommended for promotion from grade GS-11 to grade GS-12, with Mr. [REDACTED] promotion scheduled to become effective on September 5, 1972. It also appears that in September 1972 there were a total of 26 attack warning officers, and 16 of them were in positions classified at the

650

B-191794

grade GS-12 level. When the other 10 officers (including Mr. [redacted]) were recommended for promotion, it was said in an accompanying message that all 26 attack warning officers were assuming the same responsibilities and should therefore all have the same grade classification.

However, Mr. [redacted] was not promoted to grade GS-12 on September 5, 1972. Instead, the civilian personnel officer of the Army Strategic Communications Command located at Fort Ritchie, Maryland, conducted an evaluation of the duties of attack warning officers and reached the conclusion that they should all be placed in the GS-11 grade level. On February 16, 1973, the civilian personnel office formally advised Mr. [redacted] that the job descriptions covering the responsibilities of all attack warning officers had been revised and had been "evaluated to grade GS-11." Mr. [redacted] filed a classification appeal with the Civil Service Commission (CSC), but on May 1, 1973, the CSC Philadelphia Regional Office denied that appeal, sustaining the classification of the position at the grade GS-11 level.

At about the same time, the attack warning officers already in grade GS-12 were informed that their classifications were being downgraded to the GS-11 level, and a series of lengthy and complex classification appeals ensued. The records of all the proceedings are not before us, but it does appear that on September 24, 1976, the CSC Denver Field Office, Federal Employee Appeals Authority, concluded that the proposed grade reduction was not warranted in the case of an attack warning officer at the warning center located at Colorado Springs, Colorado.

Subsequently, on April 26, 1977, the CSC Bureau of Personnel Management Evaluation, advised Mr. [redacted] that upon his request and in view of possible inconsistencies in the classification of attack warning officer positions in different regions, his case was being reopened for reconsideration. On August 23, 1977, the CSC Bureau of Personnel Management Evaluation then reclassified Mr. [redacted] position to Attack Warning Officer, GS-301-12, but stated that the reclassification was not retroactive.

By letter dated August 30, 1977, addressed to the Claims Division of this Office, Mr. [redacted] expressed disagreement with the CSC ruling that his reclassification could not be made effective prior to

August 23, 1977. He contended that he was instead entitled to compensation at the grade GS-12 rate from either September 5, 1972, when he was determined to have been qualified for promotion to that grade, or from August 1973 when a co-worker, attack warning officer won an appeal of his downgrading. In support of his position Mr. [REDACTED] pointed out that his co-worker had continued to be compensated at the GS-12 grade level. In essence, Mr. [REDACTED] asserted that he had held the same position and performed substantially the same duties as a grade GS-12 officer during that period, and that by denying him a retroactive promotion, CSC had improperly denied him equal pay for the performance of equal work.

As was previously indicated, however, our Claims Division disallowed Mr. [REDACTED] claim in its October 21, 1977, settlement. Mr. [REDACTED] has questioned the correctness of that settlement, and he now further contends that he suffered an "unjustified or unwarranted personnel action" and is therefore entitled to backpay under 5 U.S.C. § 5596 (1976).

With respect to Mr. [REDACTED] contention that by denying him a retroactive promotion CSC improperly denied him equal pay for the performance of equal work, the general rule long followed by this Office and the courts of the United States in cases of this nature is that an employee of the Government is entitled only to the salary of the position to which he is actually appointed, regardless of the duties he performs. When an employee performs duties normally performed by one in a grade level higher than the one he holds, he is not entitled to the salary of the higher grade level until such time as he is promoted to that grade. United States v. [REDACTED] 95 U.S. 750 (1877); [REDACTED] v. United States, 100 Ct. Cl. 41 (1943); [REDACTED] v. United States, 183 Ct. Cl. 702 (1968); 52 Comp. Gen. 631 (1973); and Matter of [REDACTED], B-186556, July 27, 1976. In [REDACTED] v. United States, *supra*, a claimant sued to recover money allegedly owed him because he had been required to perform duties at a grade level higher than the one he held. The Court of Claims stated:

"There are innumerable instances in the Government service where employees of a lower classification perform the duties of a higher classification \* \* \* The salaries fixed by Congress are the salaries payable to those who hold the office and not to those who perform the duties of

B-191794

the office. One may hold the office only by appointment by his superior, and the law vests in the superior the discretion as to whether or not appointment to the office shall be made. Where the plaintiff has received the salary of the office to which he is appointed he has received all to which he is entitled under the law. \* \* \*." 100 Ct. Cl. at 43. (Emphasis supplied.)

The classification of positions in the Government is controlled by the Classification Act of 1949, as amended (5 U.S.C. §§ 5101-5115 (1976)), under which CSC is empowered to prescribe regulations and engage in supervisory review of an agency's classifications. The Classification Act does provide that in the classification of positions, "the principle of equal pay for substantially equal work will be followed." 5 U.S.C. § 5101(1)(A). However, neither that provision nor any other provision of the Classification Act creates a right to backpay for a period of improper classification, nor does it change the long established rule that an employee is not entitled to the benefits of a position until he has been duly appointed to it. United States v. [redacted], 424 U.S. 392 (1976). Hence, under the Classification Act, Mr. [redacted] became entitled to the salary of a grade GS-12 employee only upon his actual appointment to that grade level, and he is not entitled to any retroactive salary adjustment on the basis of any alleged improper classification or denial of equal pay between September 1972 and August 1977.

The only exception to this rule occurs when an employee who has actually been appointed to a position has his position downgraded and subsequently, through the classification appeals procedure, has his position returned to its former grade or a higher grade. Under 5 C.F.R. § 511.703 (1978), in the above situation the employee may be awarded backpay for the period during which he was downgraded. This is the only exception to the general rule and it is not applicable to Mr. [redacted] because he was never actually appointed to a grade GS-12 position prior to August 23, 1977.

Mr. [redacted] also contends that he suffered an "unjustified or unwarranted personnel action" and is therefore entitled to compensation under the Back Pay Act of 1966, codified as 5 U.S.C. § 5596 (1976). The Back Pay Act does authorize retroactive recovery of wages whenever a Federal employee has "undergone

653

2

B-191794

an unjustified or unwarranted personnel action that has resulted in the withdrawal or reduction of all or a part of the compensation to which the employee is otherwise entitled. 5 U.S.C. 5596(b). But it does not apply here because it grants an employee no substantive right to backpay for a period of claimed wrongful classification. United States v. [redacted] supra. See also Matter of [redacted] 57 Comp. Gen. 404 (1978) and 55 id. 515 (1975).

Accordingly, the settlement of our Claims Division is sustained.

*R. F. Keenan*  
Deputy Comptroller General  
of the United States