

Date: December 4, 2002
Claimant: [name]
File Number: 02-0030
OPM Contact: Deborah Y. McKissick

The claimant is employed with the U.S. Government Printing Office (GPO), as a [PG-7]. The claimant asserts that she is entitled to back pay for performing duties of a higher-graded position during a detail from December 1996 through March 2001. The Office of Personnel Management (OPM) received the compensation claim on June 12, 2002, and the agency administrative report on August 26, 2002. The claimant requested and was granted the opportunity to respond to the agency administrative report. OPM received the claimant's response on September 17, 2002. For the reasons discussed herein, the claim is denied.

The claimant asserts that she is due back pay as a result of an overlong detail to an unspecified position in which she performed duties formerly performed by an employee at the [PG-9, 11, and 12] levels during the period from December 1996 through March 2001. The documentation submitted by the claimant states that the claimant was promoted to a [PG-7] on February 15, 1998. The claimant was given a retroactive temporary promotion to [PG-7] effective October 1, 1997, through February 14, 1998, as a result of the agency's August 13, 1999, decision on her March 8, 1999, back pay claim. Her permanent promotion to [PG-7] was effective on February 15, 1998.

In the agency administrative report, the agency referenced the Comptroller General's decision, *Howard A. Morrison*, B-210917, August 1983, which addressed back pay claims for overlong details in GPO. As a result of *Morrison*, a retroactive promotion and back pay is appropriate when details exceed the allowable limits established in GPO mandatory policy. See *GPO Instruction 615.1B, Subject: Regulations Governing Details of Employees*, dated February 2, 1976.

The agency administrative report stated that the claimant was not eligible for a permanent promotion to the grade 9 level, which is one of the requirements for a retroactive promotion for an overlong detail. *Freda E. Falatko*, B-195650, March 19, 1980, *Darryl E. Laxo*, B-196227, May 15, 1980, and *Barbara A. Ralston*, B-200748, February 3, 1981.

To establish a claim for back pay based on a detail to a higher-graded position, a claimant must show that (1) an agency regulation or agreement requires a temporary promotion for such a detail to a higher-graded position and (2) the claimant was, in fact, detailed to a higher-graded position. See *Philip M. Brey*, B-261517, December 26, 1995; *Martin Kirchhausen*, B-261661 (December 26, 1995); and *Everett Turner and David L. Caldwell* (“*Turner-Caldwell III*”), 61 Comp. Gen. 408 (1982). The claimant has the burden of proving that she was detailed to and performed the duties of the higher-graded position. *Philip M. Brey*, *supra*; *Martin Kirchhausen*, *supra*.

Under GPO regulations, there is a policy that mandates granting temporary promotions after 30 days of a detail to a higher-graded position. However, the claimant was not detailed to a grade 9 position and the agency and the claimant agree that the claimant performed only some of the duties of the higher-grade position. An employee is entitled to salary only for the position occupied, even when performing duties of a higher-graded position. B-240239, October 29, 1990. A Federal employee performing the duties of a higher-graded position is not entitled to the salary of the position until the employee is actually promoted to the higher-graded position. *Cynthia A. Griffin*, B-254444, December 8, 1993.

OPM does not conduct investigations or adversary hearings in adjudicating claims, but relies on the written record presented by the parties. See *Frank A. Barone*, B-229439, May 25, 1998. An employee is not entitled to the salary of the higher grade until he or she is actually promoted to the position. *Cynthia A. Griffin*, *supra*. The agency reported that the claimant was not officially appointed or detailed to a higher-graded position and a personnel action was never documented for the claimant. Where the record presents an irreconcilable factual dispute, the burden of proof is on the claimant to establish the liability of the United States. *Jones and Short*, B-205282, June 15, 1982. Since the claimant was never officially appointed or detailed to position at the grade 9 level, the claim is denied.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the employee’s right to bring an action in an appropriate United States Court.