

Date: January 12, 2006

Claimant: [name]

File Number: 04-0024

OPM Contact: Robert D. Hendler

The claimant, who has retired from his Group Chief position with the Government Printing Office (GPO), asserts that he is entitled to back pay for performing the duties of a higher-graded position. The Office of Personnel Management (OPM) received the claim on May 28, 2004, the agency administrative report on October 15, 2004, and the claimant's response to the administrative report on November 15, 2004. For the reasons discussed herein, the claim is denied

The claimant's representative states that the claimant performed the duties of an Assistant Foreperson from June 27, 1997, through September 3, 2003. She says that the claimant was paid for the period of his detail through December 31, 1998, but was not paid for the remaining period of his detail from January 6, 1999, through September 3, 2003. She states that the claimant was responsible for supervising all Shift III employees engaged in all phases of production and proofing. The representative says that at no time did the claimant's immediate supervisor tell him to cease performing the duties of Assistant Foreperson. She states that the agency failed to investigate and learn that Assistant Foreperson duties occupied all of the claimant's time, did not fully measure the authority and demands that the claimant performed, and did not reclassify the claimant's Group Chief position to incorporate the duties and responsibilities of the Assistant Foreperson position. The claimant's representative asks that the claimant receive backpay for the relevant period at the pay rate of Assistant Foreperson, with the appropriate cost-of-living increase for each year, and that the claimant's retirement compensation be adjusted accordingly.

In support of the claim, the representative submitted an affidavit from the Foreperson who was the claimant's immediate supervisor from September 1994 to September 2003. He states the claimant began his detail on June 27, 1997, to an Assistant Foreperson position and that he believes the claimant was compensated for the detail for the period of June 27, 1997, to December 31, 1998. The former supervisor says the claimant continued "to assume the Assistant Foreperson duties and responsibilities for Shift III, Digital Prepress Section (DPS), Electronic Photocomposition Divisions (EPD)." He states while there was a decision by the Production Manager not to fill the vacancy for the Assistant Foreperson upon the retirement of the previous incumbent, to his belief no formal personnel action was taken. He states that at no time did he or

the Superintendent direct the claimant to cease performing the Assistant Foreperson duties from January 1999, to September 3, 2003.

In its administrative report, the agency indicates that it has a nondiscretionary policy that retroactive promotion and backpay are appropriate when details exceed allowable limits. The agency states that it denied the claim because the claimant's detail to the Assistant Foreperson position was terminated on January 6, 1999, and the position was then abolished. Since there was no higher-level position to which the claimant could be detailed, there was no basis for granting a temporary retroactive promotion.

The administrative report includes a copy of a January 5, 1999, memorandum from the Foreperson informing the claimant that "the vacant position of Assistant Foreperson, shift 3, will not be filled, and your detail to that position will terminate as of this date." A copy of a handwritten memorandum to the then Superintendent, with the Foreperson's initials, on the same date states that the claimant had been filling in since June 16, 1997, for the ill Assistant Foreperson, and that "I am giving ...[claimant's last name] a memo in the A.M. January 6, 1999, notifying him of the termination of his detail-copy enclosed." A copy of a January 6, 1999, memorandum from the Superintendent, EPD, regarding an internal GPO backpay claim for the claimant states that his interviews with the Foreperson and another GPO employee confirmed that the claimant acted as Assistant Foreperson since June 16, 1997, and that the claimant "was given a memorandum notifying him of the termination of his detail effective this morning January 6, 1999. (copy attached)."

The report includes a signed declaration from the Superintendent, EPD, dated October 13, 2004. The Superintendent states that prior to his promotion to his current position, he served as the Assistant Superintendent from February 15, 1998, to May 31, 2003. He says the DPS was established in EPD on September 27, 1998, combining the Copy Preparation Section, the Negative Section, and the Offset Plate Section. As the work on the new computerized system increased, the work in the Negative Section, using film to create plates diminished, and the size of the staff was reduced through attrition. He states that the claimant filled the position of Assistant Foreperson in the Negative Unit while the incumbent was ill and that the claimant was told that the position would be abolished when the incumbent retired on January 2, 1999. He indicates the film work eventually became negligible, the claimant was detailed to assist in the scanning work of the Copy Preparation Unit on another floor, and the claimant never returned to the Negative Unit. The Superintendent states the claimant's supervisor did not have the authority on his own to detail a supervisor to a higher-level position or decide if a vacant position would be filled. He also indicates that the claimant was never responsible for supervising all Shift III employees engaged in all phases of production and proofing in that "There were several other supervisors including those in other Divisions, i.e., Press and Binding, that were responsible for production and proofreading work on that shift."

In her November 8, 2004, response to the agency administrative report, the representative states that "While ...[the claimant] may not have been formally detailed as GPO contends, ...[the claimant] continued to assume the responsibilities and perform the duties of Assistant Foreperson as instructed and expected both from ...[his immediate supervisor] and other management officials of GPO." The representative lists the duties performed by the claimant and states that

the claimant continued to supervise the Negative Section until he retired. She states that while the size of the organization began to shrink due to the utilization of a computerized system, there still was a need for, and the claimant performed duties of, an Assistant Foreperson and “supervised more employees than other Assistant Forepersons during the transitional period and through the date of his retirement.” She also reiterated her previous arguments in favor of granting the claims.

To establish a claim for back pay based on the performance of the duties of a higher-graded position, a claimant must show that (1) an agency regulation or agreement requires a temporary promotion to a higher-graded position and, (2) that the claimant was, in fact, detailed to a higher-graded position. See Philip M. Brey, B-261517, December 26, 1995; Everett Turner and David L. Caldwell ("Turner-Caldwell III"), 61 Comp. Gen. 408 (1982); and Albert C. Beachley and Robert S. Davis, 61 Comp. Gen. 403 (1982).

The claimant’s representative contends that both requirements have been met. The agency claim decision, however, states that the second requirement has not been met. 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, 1988. Generally speaking, where the official record does not support a claim, the claim must be denied. See 4 CFR. 31.7. See also Nathaniel C. Carter, B-238487, May 25, 1990; Jones and Short, B-205282, June 15, 1982; Dennis F. Morgan, B-203926, September 22, 1981, and Wade B. Bumgardner, B-184795, August 5, 1976. We concur with the agency that the second requirement has not been met. The statement provided by the claimant’s representative from the claimant’s former supervisor supporting the claimant’s contentions is contradicted by documentation from the same supervisor and higher-ranking officials contemporaneous with the claim period. The claimant’s representative did not provide additional documentation undermining the content or validity of these statements. Where the agency’s factual determination is reasonable, we will not substitute our judgment for that of the agency. See e.g., *Jimmie D. Brewer*, B-205452, Mar. 15, 1982. Therefore, the claim is denied.

As noted previously, the claimant’s representative questions the classification of the claimant’s position, stating that by performing the work of both his permanent Group Chief position and the Assistant Foreperson position, “OPM should find that...[the claimant]’s performance of duties were more than that of the Group Chief position and those of the Assistant Foreperson position.” OPM’s authority to adjudicate compensation and leave claims flows from 31 U.S.C. §3702. The authority in §3702 is narrow and limited to adjudication of compensation and leave claims. Section 3702 does not include any authority to decide position classification or job grading appeals. Therefore, OPM may not rely on 32 U.S.C. §3702 as a jurisdictional basis for deciding position classification or job grading appeals, and does not consider such appeals within the context of the claims adjudication function that it performs under §3702. Cf. *Eldon D. Praiswater*, B-198758, December 1, 1980, (Comptroller General, formerly authorized to adjudicate compensation and leave claims under §3702, did not have jurisdiction to consider alleged improper job grading); *Conon R. Odom*, B-196824, May 12, 1980, (Comptroller General did not have jurisdiction to consider alleged improper position classification).

The claimant's representative also has made allegations concerning his retirement benefits. Section 3702(a)(2) of title 31, United States Code, limits the claims settlement authority of this office to claims involving Federal civilian employees' compensation and leave. The authority granted in §3702(a)(2) also does not extend to claims concerning retirement benefits.

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.