

Date: August 19, 2002

Matter of: [name]

File Number: 02-0012

OPM Contact: Deborah Y. McKissick

The claimant asserts that she is entitled to back pay for the difference in salary between a GS-11 and a GS-12 grade level for the period from August 1990 to the present. She was formerly employed at [agency component] as a Management Analyst, GS-0343-11, during the claim period. We received the claim on January 28, 2002, and the agency's administrative report on April 23, 2002. For the reasons discussed herein, the claim is denied.

The claimant asserts, as a result of the issuance of a new position classification standard for the Management and Program Analysis Series, GS-0343, and the Administrative Analysis Grade-Evaluation Guide by the U.S. Office of Personnel Management (OPM) in 1990, her position should have been reclassified at the GS-12 grade level in August 1990. The claimant references the upgrade of another Management Analyst position in the agency during the claim period. However, we must make our decisions by comparing the claimant's issues to Federal laws, regulations and other Federal guidelines. We cannot compare the claimant's position to others as a basis for deciding her claim.

The claimant and the agency agree that she was assigned to position description number 00577 through December 1993. [Agency component] did not take any actions after conducting an official review of the claimant's position in December 1993. The agency's letter of September 13, 2001, provides the final classification determination made by the Medical Command (MEDCOM), the facility's higher headquarters, for the work described in PD number 00577. MEDCOM's evaluation statement states that the claimant provided information during an interview that she was also performing duties "specifically related to the Medical Expense Performance Reporting System," as those duties were described in PD number 40390, at the time she believes the new OPM standards should have been applied to PD number 00577. MEDCOM evaluated the work for PD number 00577 as Management Analyst, GS-0343-11.

As a general rule, Federal government employees are entitled only to the salaries of the positions to which they are appointed, regardless of the duties they actually perform. Thus, even if a position to which an employee is appointed is subsequently reclassified to a position of higher grade, entitlement to the pay of the higher grade does not commence until the employee is actually appointed to the higher grade. Delays in reclassifying a position to

a higher grade do not provide a basis for backpay. Comptroller General Decision B-245737, November 25, 1991.

We note that even though 5 U.S.C. §§ 5112 and 5346 (c) authorize OPM to decide position classification and job grading appeals, respectively, OPM's authority to adjudicate compensation and leave claims flows from a different law – 31 U.S.C. §3702. The authority in section 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 section 3702. *Cf. Eldon D. Praiswater*, B-198758, December 1, 1980 (Comptroller General, formerly authorized to adjudicate compensation and leave claims under section 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 Back Pay Act, as 5 U.S.C. §5596(b), provides for back pay when the appropriate authority finds that an employee was affected by an unjustified or unwarranted personnel action that resulted in the withdrawal or reduction of all or part of the employee's pay. However, in specifying that subsection (b) does not apply to "any" reclassification action, section 5596(b)(3) excludes reclassification actions from coverage under the Back Pay Act.

OPM does not conduct investigations or adversary hearings in adjudicating claims, but relies on the written record presented by the parties. *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 appointed to a higher-graded position. 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. The claimant's position was never upgraded to the GS-12 grade level. Accordingly, 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.