

Date: September 16, 2002  
Claimant: [name]  
File Number: 02-0013  
OPM Contact; Deborah Y. McKissick

The claimant is a Training Specialist, GS-1712-11, employed with the Department of the Army. The claimant asserts that he is entitled to back pay for performing duties of a higher-graded position. The Office of Personnel Management accepted the claim on January 28, 2002, and received the agency administrative report on April 23, 2002. The claimant requested and was granted an opportunity to respond to the agency administrative report. We received the claimant's response on July 29, 2002. The delay in OPM's receipt of the claim was due to the delay associated with irradiating mail prior to its delivery to Federal offices. For the reasons discussed herein, the employee's claim is denied.

The claimant asserts that he performed the duties of a "lead" training specialist at the GS-12 level, from April 1996 through November 1999. The claimant stated that he performed these duties after two Instructional Systems Specialists were promoted and moved to new positions. He described his educational training and experience prior to April 1996.

According to the agency administrative report, the claimant's duties were consistent with the position description for a Training Specialist, GS-1712-11, with a few minor exceptions. The minor exceptions included performing "some independent, general supervisory and administrative responsibilities under the job description heading of 'Performs other duties as assigned.'"

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 did not provide any documentation that shows these two conditions were met.

There are several Comptroller General Decisions that address this issue. 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. 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 has the burden of proving by clear and convincing evidence that he or she was detailed to and performed the duties of a higher-graded position. *See, e.g., Dennis F. Morgan*, B-203926, Sept. 22, 1981. The claimant has not provided official documentation for substantial portions of the claim. Generally speaking, where the official record does not support a claim, the claim must be denied. See 4 CFR 31.7.\* *See National C. Carter*, B-238487, May 25, 1990; *Jones and Short*, B-205282, June 15, 1982; and *Wade B. Bumgardner*, B-184795, August 5, 1976.

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.

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\*On October 31, 1996, OPM published a *Federal Register* notice stating that it would apply to any authority transferred from GAO any applicable GAO regulations in effect at the time of the transfer. 61 Fed. Reg. 51730.