

Date: October 22, 2003

Claimant: [name]

File Number: 03-0021

OPM Contact: Deborah Y. McKissick

The claimant is requesting back pay for the period that she was detailed to perform Information Technology (IT) Specialist, GS-2210, duties. The claimant was an employee of the Defense Logistics Agency as a Management and Program Analyst, GS-343-12, during the claim period. The Office of Personnel Management (OPM) received the claim on February 26, 2003, and the agency administrative report on June 13, 2003. For the reasons discussed herein, the claim is denied.

The claimant acknowledged that she was officially assigned to her organization on April 9, 2000, as a Management and Program Analyst, GS-343-12. The claimant and the agency concur that the claimant was detailed to IT Specialist duties from April 9, 2001 through December 15, 2002, at her current grade and salary of a GS-12. However, the claimant believes she is due backpay for the claim period because she did not receive the special salary for IT Specialists while performing the IT duties.

The agency administrative report stated, "On December 15, 2002 [the claimant] was officially reassigned from a Management and Program Analyst, GS-343-12 position, to an Information Technology Specialist (Info Sec), GS-2210-12 position. Prior to her reassignment, [the claimant] was detailed to perform technology duties that involved the performance of duties at the same grade level as that of her official GS-343-12 position. Positions officially classified under the GS-2210 Information Technology series position classification standard have received a special salary rate since January 2001. [The claimant] is claiming entitlement to back pay for performing information technology duties for a period prior to her reassignment while detailed from her official GS-343-12 position."

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 he was detailed to and performed the duties of the higher-graded position. *Philip M. Brey, supra; Martin Kirchhausen, supra.*

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. The Civilian Personnel Law Manual states, “There is no entitlement to back pay for the period prior to reclassification of incumbent's position.” B-200638, October 9, 1981.

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 31 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 detailed to duties in the GS-2210 series at the same grade-level of her permanent position, GS-343-12, prior to her permanent reassignment to the GS-2210-12 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 Civilian Personnel Law Manual states that:

a federal employee is entitled only to the salary of the position to which the employee is appointed, regardless of duties performed. Even though a position is subsequently reclassified to a higher grade consistent with the duties the employee has been performing, such action may not be made retroactively effective. *United States v. Testan*, 424 U.S. 392 (1976).

The claimant was not permanently reassigned to an IT Specialist position until December 15, 2002, and was not entitled to special pay prior to the permanent assignment to the position. 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.