

Date: October 16, 2003  
Claimants: [names]  
File Number: 02-0039  
OPM Contact: Deborah Y. McKissick

The claimants are Supply Technicians, GS-2005-7, with Department of the Army. They believe that they are entitled to back pay for the difference in salary between a GS-06 and a GS-07 grade level for the period from August 29, 2000 to July 14, 2002. The Office of Personnel Management (OPM) received their claim on August 16, 2002, and the agency administrative report on October 2, 2003. For the reasons discussed herein, the claim is denied.

The claimants assert, as a result of the issuance of a new position classification standard for the Supply Technician Series, GS-2005, on August 29, 2000, their positions should have been reclassified at the GS-07 grade level on August 29, 2000.

The agency administrative report states that in June 2002, the claimants' supervisor notified the Alaska National Guard Human Resource Office that the claimants' counterparts in other states were promoted from GS-06 to GS-07 following the release of a new National Guard Bureau (NGB) position description, dated August 29, 2000. However, OPM must make our decisions by comparing the claimants' issues to Federal laws, regulations and other Federal guidelines. We cannot compare the claimants' position to others as a basis for deciding their claim. The agency audited the claimants' positions and assigned both claimants to the GS-07 grade effective July 14, 2002.

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 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*. 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 claimants were not assigned to GS-07 grade level positions until July 14, 2002. 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).

Accordingly, the claimants cannot be retroactively awarded back pay for the period prior to the effective date of their promotions to the GS-07 positions. Therefore, 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.