



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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B-178242

June 5, 1973

Mr. John J. Marini  
4901 Seminary Road  
Alexandria, Virginia 22311

Dear Mr. Marini:

We refer to your letter, with enclosures, dated February 4, 1973, to our Transportation and Claims Division in which you requested reconsideration of its settlement dated January 24, 1973, in Claim No. 2-2456882, which disallowed your claim for an increase in pay retroactive to January 1, 1967, following the reclassification of your position from GS-14 to GS-15, effective October 18, 1970.

The record shows that in June 1969 you appealed the Classification of Position Description 40217 as a Supply Systems Analyst, GS-2003-14. On September 29, 1970, the Office of Civilian Manpower and Management of the Navy granted your appeal. Accordingly, it was determined that your position would be reclassified to Program Manager GS-340-15, effective October 18, 1970. You appealed the determination as to the effective date of the reclassification, but on November 23, 1970, the Office of Civilian Manpower Management of the Navy denied the appeal. On June 28, 1971, the Civil Service Commission upheld the Navy's determination as to the effective date of the reclassification. You claimed back pay by letter dated July 7, 1971, to our Transportation and Claims Division which determined that you were not entitled to back pay under the Back Pay Act, codified in 5 U.S.C. 5545 and that you were not entitled to compensation at a GS-15 level until the effective date of the reclassification of your position.

You contend that the duties you have performed since January 1967 are the same as those performed when your position was reclassified and that the reclassification action constituted a redescription of an existing position rather than appointment to a new one. You further contend that your supervisors were in violation of law by not updating your position description and making appropriate classification and grade changes in 1967, 1968, and 1969 to reflect additionally assigned responsibilities.

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Since you state that your claim is not based on the Back Pay Act, it will not be necessary to discuss our Transportation and Claims Division's determination that you are not entitled to a retroactive increase in pay under that statute.

Retroactive salary increases may be granted only by express authority of the Congress and may not be granted administratively. 31 Comp. Gen. 191 (1951); 39 Id. 583 (1960). Subsection 7-2 of Federal Personnel Manual, section 511-23, provides that a classification change brought about by an appeal decision can take effect no earlier than the date of the appeal decision and no later than the beginning of the fourth pay period following the date of the decision unless a later date is specified in the decision. Accordingly in the absence of either a Federal statute permitting your pay increase to become effective prior to the date your reclassification was approved or circumstances showing that your case comes within one of the situations in which a classification action can be corrected, we cannot change the Navy's decision to make your reclassification effective October 18, 1970.

We have made exceptions to the general rule that a personnel action cannot be made retroactive so as to increase the right of an employee to compensation, where through administrative or clerical error a personnel action was not effected as originally intended, where nondiscretionary administrative regulations or policies have not been carried out, or where an administrative error has deprived an employee of a right granted by statute or regulation. B-175372, April 13, 1972, copy enclosed. Included in these exceptions was our decision as cited by you, 48 Comp. Gen. 502 (1969), where we concluded not only that the claimant's misclassification violated both a statute and a regulation but also was done intentionally. You have neither averred, nor does the record indicate, that the Navy intentionally misclassified your position. In this regard we note that the decision of the Position Classification Specialist that your position should be upgraded indicated that there were no Civil Service Commission standards for grade levels in the GS-340 series and that he was forced to rely on descriptions in the GS-343 series. It seems clear from his decision that the determination that your position should be on a GS-15 level was a close decision since the duties of GS-14 and GS-15 positions under the GS-343 series were very similar.

As to your claim that you performed the same duties from 1967 until and after the time your position was reclassified it is an established rule

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that even though an employee performs the duties of a position having a higher grade than the position to which he has been duly appointed he is not entitled to the compensation of such grade prior to his actual promotion thereon. See D-172172, October 18, 1971, and 52 Comp. Gen. (P-173976, April 6, 1973), copies enclosed; and Golden v. United States, 100 C. Cl. 41 (1943). As to your claim that the eventual reclassification action constituted a redescription of an existing position rather than appointment to a new one, see Wright v. United States, 101 C. Cl. 296 (1944), and D-174655, January 20, 1972, copy enclosed. In Wright v. United States, 103 C. Cl. 702 (1968) the court held this rule applicable even though an agency's classification of a position is later determined on appeal to the Civil Service Commission to have been wrong, as long as the misclassification action was not shown to have been arbitrary. The record before us does not indicate an arbitrary misclassification of your position.

Finally as to your claim that your supervisors failed to update your position description, it is not within the jurisdiction of our Office to determine whether a position has been properly described. See D-173931, September 27, 1971, copy enclosed.

The settlement of January 24, 1973, by our Transportation and Claims Division is affirmed.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States

Enclosures - 5

cc: Department of the Navy  
Navy Regional Finance Center  
Washington, D. C. 20390