



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

Mr. Heitzman
14244 PLME

IN REPLY
REFER TO: B-196633 (RJH)

July 9, 1980

The Honorable Orrin G. Hatch
United States Senator
3438 Federal Building
Salt Lake City, Utah 84138

Dear Senator Hatch:

We refer further to your letter of June 6, 1980, concerning the claim of Mr. Oscar G. Adams for a retroactive temporary promotion and backpay.

Mr. Adams requested that you forward to us certain documents which allegedly indicate that the position he held was classified as a GS-9 immediately prior to his being hired. However, the documents furnished by him support the information provided by his employing agency.

As was stated in our decision B-196633, May 19, 1980, at page 2:

"Mr. Adams claimed he was detailed during the period August 26, 1974, to January 1, 1978. The Department states in its report that Mr. Adams was assigned to Position Description 2552, which was at the GS-7 level in 1974, recertified at that level in 1977, and remained at that grade until it was replaced on February 14, 1978, Civil Engineering Technician (Drafting), GS-802-9. Thus a higher grade classified position was not established until 1-1/2 months after the alleged higher-grade detail of Mr. Adams." (Emphasis added.)

Mr. Adams has furnished copies of Position or Job Description 2676 and 2552. Both Position Descriptions correspond in all respects to the information previously provided by the Department of the Navy. Position Description 2552 is dated August 7, 1974, and is for a GS-802-07 Civil Engineering position.

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Mr. Adams' Notification of Personnel Action is effective August 25, 1974 and shows that he was employed at a GS-7 level to fill this position. Thus, the position was classified at grade GS-7 prior to his being hired. Position Description 2676 reclassified the position at grade GS-802-09, Civil Engineering Technician (Drafting). The copy you furnished us does not show the complete date on which it was approved. However, the Department had previously informed us that Position Description 2676 was approved on February 14, 1978. Therefore, as stated in our decision of May 19, 1980, the position was not established at the higher grade until 1-1/2 months after Mr. Adams' detail had ended.

This Office settles claims on the basis of the written record and does not hold adversary hearings. 4 C.F.R. § 31.7 (1978). We can assure you that full consideration has been given to Mr. Adams' claim in our Claims Settlement of August 23, 1979, and our prior decisions of January 4, 1980, and May 19, 1980.

In addition to showing that there was an established higher grade classified position, it is also necessary for Mr. Adams to prove that he was detailed to such a position and performed the higher grade duties. The Department has denied such a fact and we can find nothing in the record to dispute its findings.

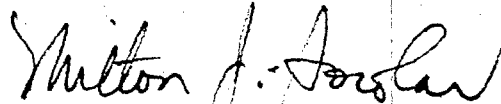
As regards the alleged promise that the job would be reclassified after 90 days, Mr. Adams could have appealed his job classification to his agency and to the Civil Service Commission (now Office of Personnel Management) under the provisions of title 5 of the Code of Federal Regulations, Part 532, subpart G. However, had he been successful, the higher classification would have applied prospectively only. United States v. Testan, 424 U.S. 392 (1976).

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Decisions of this Office are binding on Executive agencies of the Government. However, this does not preclude Mr. Adams from seeking redress through the United States Court of Claims or District Court.

We hope that this information is responsive to your request.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Milton J. Fowler".

For The Comptroller General
of the United States