



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

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B-192433

MAR 13 1979

[Disallowance of Claim For Backpay]

The Honorable Adlai E. Stevenson
United States Senator
Suite 3960
Federal Building
230 South Dearborn Street
Chicago, Illinois 60604

Dear Senator Stevenson:

Further reference is made to your letter of January 26, 1979, on behalf of Mr. Sanford M. Altschul the disallowance of whose claim for backpay for an overlong detail and payment for time charged to leave without pay and absence without leave was sustained in our decision Matter of Sanford M. Altschul, B-192433, December 4, 1978.

We have received a letter from Mr. Altschul, dated December 18, 1978, requesting certain documents and information. The materials requested were furnished with our letter of February 13, 1979. A copy of that response is enclosed.

In our letter of February 13, 1979, we detailed the distribution of our December 4, 1978, decision. In that letter we also discussed the probative value of the December 15, 1972, memorandum.

It appears that the major thrust of Mr. Altschul's complaint about our decision is that he was, in fact, doing work at a higher grade level, and he attempts to substantiate this position through voluminous documentation that he has previously forwarded to us. As was stated in the February 13, 1979, letter to Mr. Altschul, we must accept the validity of agency prepared documents, which show his position to be properly classified at the grade level at which he was appointed and paid. Mr. Altschul is, in effect, asking us to reclassify his position based upon newspaper clippings which allegedly demonstrate that the contracts that he administered were complex enough to warrant a higher grade level classification.

Classification of positions is a matter for the employing agency and the Office of Personnel Management under 5 U.S.C. § 5112 and when the classification of a position is certified to be appropriate by

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the Office of Personnel Management, there is no further administrative appeal of that certification. Additionally, in United States v. Testan, 424 U.S. 392 (1976), the Supreme Court held that there is no statutory basis for paying backpay for a period during which a position was improperly classified. Thus, even if it could now be determined that Mr. Altschul's position had been improperly classified, there would be no basis for backpay.

You have also asked if Mr. Altschul has any further avenues of appeal. There are no other administrative appeals open to him. However, he may file suit in the United States District Court under 28 U.S.C. § 1346(a)(2) if his claim is for less than \$10,000, or in the Court of Claims under 28 U.S.C. § 1491, no matter what the amount of the claim.

We hope that this information is sufficient for you to respond to Mr. Altschul.

Sincerely yours,

R. F. KELLER

Deputy

Comptroller General
of the United States

Enclosure