



United States
**Office of
Personnel Management**

Dallas Oversight Division
1100 Commerce Street, Room 4C22
Dallas, TX 75242-9968

In Reply Refer To: Your Reference:
MSO:FLSA

March 10, 1997

OPM decision number: F-3502-02-01

[name]

President

National Federation of Federal Employees

[address]

Dear [name]:

Your December 6, 1996, letter to the Comptroller General concerning [claimant] and questions you had regarding possible back pay for [claimant] was forwarded to this office for response.

You indicate [claimant] was hired in 1989 as a Laborer, WG-2, but performed duties of a WG-6 Materials Handler from September 1990 until June 1994. You further note that [claimant] was never actually appointed to the Materials Handler position.

In Comptroller General Decision B-232695, dated December 15, 1989, the U.S. Comptroller General states that an ". . . employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties performed. When an employee performs the duties of a higher grade level, no entitlement to salary of the higher grade exists until such time as the individual is actually promoted. This rule was reaffirmed by the United States Supreme Court in *United States vs. Testan*, 424 U.S. 392, at 406 (1976), where the Court stated that '. . . the Federal employee is entitled to receive only the salary of the position to which he was appointed, even though he may have performed the duties of another position or claim that he should have been placed in a higher grade.' . . . Consequently, back pay is not available as a remedy for misassignments to higher level duties or improper classifications."

The limitations under the Fair Labor Standards Act (FLSA) also do not apply in [claimant's] case. The time limits under FLSA are regarding overtime claims, not claims for back pay. Should you need additional information, please let us know.

Sincerely,

Bonnie J. Brandon
FLSA Claims Officer