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PHM-11
Mr. Brown

DECISION



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

FILE: B-196612

DATE: March 5, 1980

MATTER OF: Brian J. Connell

DIGEST: A GS-15 employee of the National Highway Traffic Safety Administration was detailed to a GS-16 (supergrade) position without the agency requesting approval from the Civil Service Commission as is required by 5 U.S.C. § 3324(a). Since the agency had no authority to unilaterally place the employee in a supergrade position, the employee's claim for a retroactive temporary promotion is denied. See 56 Comp. Gen. 432 (1977). Estoppel argument must fail because the agency acted beyond the scope of its authority. See cited decisions.

AGC00426

By a letter dated September 17, 1979, Mr. Brian J. Connell, through his attorney, appealed our Claims Division's settlement issued September 6, 1979, which disallowed his [claim for a retroactive temporary promotion and backpay]. In his appeal Mr. Connell does not mention that portion of his claim prior to March 22, 1970, which the Claims Division found to be barred by the Act of October 9, 1940, as amended, 31 U.S.C. § 71a (1976), which bars claims against the United States not received in the General Accounting Office within 6 years of accrual. Therefore, we consider his appeal to cover only that portion of the claim which accrued on or after March 22, 1970. For the record, however, we note that the Claims Division was correct in finding that the portion of Mr. Connell's claim which accrued prior to March 22, 1970, is barred by 31 U.S.C. § 71a, since the claim was received in the General Accounting Office on March 22, 1976.

The record shows that during all portions of the claim Mr. Connell was employed in a GS-15 position by the National Highway Traffic Safety Administration, Department of Transportation. From before March 22, 1970, until September 1971 Mr. Connell served as Acting Chief of the Information Systems Division, a GS-16 position.

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The Claims Division denied Mr. Connell's claim on the basis of our decision Matter of Rankin, 56 Comp. Gen. 432 (1977), which held that temporary retroactive promotions to supergrade (GS-16, 17, or 18) positions may be made only with the prior approval of the Civil Service Commission (now Office of Personnel Management). That decision was based on the statutory requirements of 5 U.S.C. §§ 3324(a) and 5108(a).

In his appeal Mr. Connell contends that he should not be penalized for the failure of his agency:

"* * *to comply with the statutory requirement of obtaining prior CSC approval. It was the agency's responsibility and obligation to satisfy this requirement and the claimants should not be made to suffer for the errors of the agency's nonfeasance. The claimants had no choice but to place total reliance on the agency to meet its managerial responsibility. The agency should be estopped from not having to pay the higher supergrade rate to the claimants."

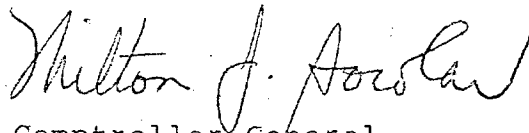
The denial of Mr. Connell's claim by our Claims Division on September 6, 1979, is sustained. In Matter of Rankin, supra, we considered a similar situation in which an agency detailed an employee to a supergrade position without seeking or receiving approval of the employee's qualifications for a supergrade position as required by 5 U.S.C. § 3324(a). In denying the retroactive temporary promotion in Rankin we noted that "an agency cannot unilaterally place an employee in a supergrade position * * *."

With regard to Mr. Connell's contention that his agency should be estopped from not having to pay him the salary of a supergrade position because of its error in failing to obtain approval of his qualifications for promotion from the Civil Service Commission, it is a well established rule of law that the Government is not bound beyond the actual authority conferred on its agents by statute or regulations. Furthermore, the Government is not estopped to deny the unauthorized

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acts of its agents. Those who deal with the Government are deemed to have notice of the limitations on authority. See German Bank v. United States, 148 U.S. 573, 579, (1893); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); 58 Comp. Gen. 35 (1978); 56 Comp. Gen. 85 (1976); and 53 Comp. Gen. 11 (1973).

Accordingly, since the agency was without authority to unilaterally place Mr. Connell in a supergrade position, the disallowance of his claim for a retroactive temporary promotion and backpay is sustained.



For The Comptroller General
of the United States

Memorandum

March 5, 1980

TO : Director, Claims Division
Milton J. Fowler
FROM : Comptroller General
For The
SUBJECT: Appeal of Brian J. Connell - B-196612-O.M.

Returned herewith is file Z-2629397 and a copy of our decision of today which sustains your disallowance of Mr. Connell's claim for a retroactive temporary promotion and backpay.

Attachments