



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Cynthia A. Griffin

File: B-254444

Date: December 8, 1993

### DIGEST

The Selective Service System detailed an employee from her GS-11 position to a GS-12 position, and the employee performed the higher level duties of the GS-12 position for almost 2 years. A federal employee is generally entitled only to the salary of the employee's appointed position even though higher level duties are performed. In the absence of any evidence of mandatory agency regulation or collective bargaining agreement provision requiring temporary promotions for details to higher-graded positions, the employee's backpay claim based on her performance of the duties of the higher-graded position is denied.

### DECISION

The Selective Service System has requested an advance decision as to whether it may pay the backpay claim of Ms. Cynthia A. Griffin based on her performance of the duties of a higher-graded position.<sup>1</sup> For the reasons stated below, we conclude that the Selective Service System may not pay her claim.

The record shows that the Selective Service System officially detailed Ms. Griffin from her position as a program analyst, Grade GS-11, to a position as a program analyst, Grade GS-12, from July 17, 1991, to July 6, 1993. Ms. Griffin's supervisors have certified that she did, in fact, perform the duties of the Grade GS-12 position, and a Personnel Management Specialist evaluated her duties as being at the GS-12 level for the period involved.

The general rule is 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

<sup>1</sup>This decision was requested by Mr. Joseph S. Tropea, Acting Controller, Selective Service System, National Headquarters, Arlington, VA.

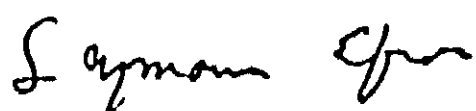
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performs the duties of a position at a higher grade level, no entitlement to the salary of the higher grade exists until such time as the individual is actually promoted. This rule was reaffirmed by the United States Supreme Court in United States v. Testan, 424 U.S. 392, at 406 (1975), 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 claims that he should have been placed in a higher grade."

In regard to its authority to detail employees, the Selective Service System follows the Federal Personnel Manual (FPM), which explicitly provides that the employee continues to hold the position from which detailed and keeps the same status and pay.<sup>1</sup> Consequently, backpay is not generally available as a remedy for misassignments to higher level duties or improper classifications.<sup>2</sup>

Ms. Griffin also claims that she received disparate treatment by the Selective Service System in this matter. Our Office does not investigate claims of disparate treatment under federal civil rights statutes by employees of other agencies. Rather, such claims are under the jurisdiction of the Equal Employment Opportunity Commission.

Accordingly, the backpay claim of Ms. Griffin must be denied in the absence of any evidence of mandatory agency regulation or collective bargaining agreement provision requiring temporary promotions for details to higher-graded positions. See Albert W. Lurz, 61 Comp. Gen. 492 (1982).

*for*   
James F. Hinchman  
General Counsel

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<sup>2</sup>See FPM, Chap. 300, Subchap. 8, para. 8-3(a) (Inst. 369, May 15, 1990).

<sup>1</sup>See Barth and Byrd, B-240239, Oct. 29, 1990, and Turner-Caldwell, III, 61 Comp. Gen. 408 (1982). We note that the record indicates that in March 1982, the Selective Service System gave Ms. Griffin a Quality Step Increase, based, in part, on the higher level work performed while on detail.