

GAO

Report to the Chairman, Subcommittee
on Civil Service, Committee on
Government Reform and Oversight
House of Representatives

June 1997

PERSONNEL PRACTICES

Improper Personnel Actions on Selected CPSC Appointments



General Government Division

B-276748

June 27, 1997

The Honorable John L. Mica
Chairman, Subcommittee on Civil Service
Committee on Government Reform and Oversight
House of Representatives

Dear Mr. Chairman:

Your July 23, 1996, letter requested that we investigate alleged improper personnel activities at the Pension Benefit Guaranty Corporation (PBGC) and the Consumer Product Safety Commission (CPSC). More specifically, you were concerned about alleged improper hirings of former Internal Revenue Service (IRS) employees by PBGC and alleged improper personnel actions and "burrowing in" by political appointees at CPSC.¹ We reported on the results of our work at PBGC in October 1996.² This report provides the results of our work at CPSC.

The original objective of our work at CPSC was to determine whether the appointments of six individuals who were the subjects of the allegations received by your office were made in accordance with merit system principles and applicable rules and regulations. As we conducted our audit work and at your request, we added an objective to identify the number of appointments that CPSC had made at advanced rates of pay (pay at a level higher than the minimum for the position's grade) during the period beginning in March 1994 when the current CPSC Chairman assumed office, and ending in March 1997; and to determine whether the justification for those rates was documented as required by federal regulations.

Results in Brief

The allegations concerning the six appointments proved to be partially true. The appointments did not, as alleged, constitute burrowing in because the individuals did not convert from noncareer political appointments to career appointments in the competitive service.³ Each of the appointments was beset, however, by one or more irregular or improper personnel actions. These included (1) three instances in which proper candidate examination and selection procedures were not

¹"Burrowing in" is a term generally used to refer to the conversion of former political appointees to career status in the competitive service.

²Hiring of Former IRS Employees by PBGC (GAO/GGD-97-9R, Oct. 2, 1996).

³The six allegations involved one noncareer, Schedule C political appointment; one career appointment based on the individual's eligibility due to prior service in the legislative branch; three noncareer, term appointments lasting up to 2 years; and one noncareer, temporary appointment.

followed, causing, in two cases, veterans with veterans preference eligibility to be denied proper consideration in the selection process; (2) three instances in which advanced rates of pay based on superior qualifications were set without the required documentation to justify such rates; and (3) two instances in which the proper use of term appointment authority was questionable.

In December 1996, we asked the Office of Personnel Management (OPM), which is responsible for overseeing the federal personnel system, to review our findings for the six appointments and, if those findings were accurate, to tell us what corrective actions it would instruct CPSC to take. OPM generally agreed with our findings and directed CPSC to take certain actions, such as to notify the veterans that they are to receive priority consideration for the next positions that become available that are similar to those for which they had applied. CPSC took the instructed steps and reported to OPM in April 1997. OPM subsequently notified CPSC on May 28, 1997, that it was satisfied with the actions taken.

CPSC made 20 additional appointments between March 1994 and March 1997 in which, according to CPSC data, the appointees received advanced rates of pay. In 2 of the 20 cases the individuals had resigned from CPSC, and their official personnel folders (OPFs) were not readily available. Of the remaining 18 appointments, 9 were based on the superior qualifications of the appointees and 8 were based on previous salary levels of the appointees. In the one remaining case, the basis for the advanced rate of pay could not be determined. Supporting documentation for five of the nine superior qualification appointments was in the appointees' OPFs. Supporting documentation for the other four was not present. CPSC officials said that they have since prepared, or are preparing, supporting justification for these four. Supporting documentation existed in the OPFs of the eight appointees whose salary was set based on their highest previous salary levels.

CPSC officials attributed the irregular or improper personnel actions to administrative error and misunderstandings by its personnel staff and said that the agency has taken steps to improve its personnel operations. According to CPSC's personnel director, additional training is being provided to personnel staff, internal controls are being enhanced, and guidelines are being written to help ensure that future personnel actions are conducted properly.

In February 1996, OPM delegated to CPSC the authority to conduct open, competitive examinations for entry to various CPSC positions and from the results of those entry examinations, develop lists of qualified applicants. Given the problems CPSC has had in properly carrying out personnel actions, it is important that CPSC is successful in improving its personnel operations and is able to competently handle its delegated authority. OPM is responsible for ensuring that CPSC exercises its delegated authority in full compliance with merit system principles, rules, and regulations. The primary way OPM ensures such compliance is by conducting oversight reviews. An OPM official told us that the agency plans to conduct such a review of CPSC in 1998.⁴

Background

CPSC is an independent federal agency established by the Consumer Product Safety Act (P.L. 92-573) with the mission to reduce unreasonable risks of injury and deaths associated with consumer products. As an injury prevention agency, CPSC is to research product hazards, participate with industry in developing voluntary standards for products, issue and enforce mandatory standards, and inform the public of potential product hazards. CPSC also is to direct the recall of dangerous products and enforce its statutes in administrative and federal court proceedings.

The authorizing legislation provides for the appointment of five commissioners by the President for staggered 7-year terms. As of June 1997, CPSC had three commissioners, one of whom was designated CPSC Chairman. The Chairman is the principal executive officer of CPSC, with authority to exercise all executive and administrative functions of the agency. Personnel operations are to be conducted by a staff of nine employees. During fiscal year 1997, CPSC has hired approximately 40 individuals.

CPSC received appropriations of approximately \$42.5 million for fiscal years 1994 and 1995 and about \$40 million for fiscal year 1996. Its personnel ceiling was 511 full-time equivalent (FTE) positions in fiscal year 1994 and 487 FTE positions in fiscal years 1995 and 1996.

Scope and Methodology

To determine whether the six appointments that were the subject of allegations were made in accordance with merit system principles and applicable rules and regulations, we (1) identified the appointment

⁴A CPSC official told us that the agency plans to contract with OPM by July 1997 for an independent audit of CPSC's use of delegated examining authority. Such an audit would be in addition to the planned oversight review by OPM in 1998.

procedures followed, as documented in the OPFS and in CPSC's merit staffing case files⁵ for each appointment, and (2) reviewed the procedures in light of merit system principles and applicable federal personnel rules and regulations. We interviewed CPSC personnel and management officials to discuss questions we developed on each case. We also provided our case summaries, including the problems we identified, to OPM and asked whether it agreed with our findings and, if so, what corrective actions OPM intended to instruct CPSC to take. We discussed and clarified OPM's response, where necessary, with officials from that agency.

To identify the number of appointments that CPSC had made at advanced rates of pay during the period March 1994 through March 1997, and to determine whether the justification for those rates was documented as required by federal regulations, we obtained a listing from CPSC of appointments made during this period with advanced salary rates. The listing contained the names of three individuals who were part of the six appointments that were the subjects of allegations of improper personnel actions and burrowing in, and whose advanced pay rates we had already reviewed. After subtracting those 3 from the listing, 20 others remained. We reviewed the OPFS of 18 of the 20 to determine whether the required documentation to justify the advanced rates was present. The other two appointees had resigned from CPSC, and their OPFS had been sent to the Federal Records Center and were not readily available.

We did not verify the completeness of CPSC's listing of those appointments involving advanced salary rates. We also did not attempt to reach conclusions about the quality or sufficiency of the written justifications in those cases in which written justifications were present.

During our review, CPSC obtained OPM's assistance in reviewing appointments and promotion actions taken by CPSC during the period March 10, 1994, through October 31, 1996. OPM also reviewed the appointments of senior executive and Schedule C employees on board at the time OPM provided the assistance. We discussed this work with OPM and CPSC officials, reviewed a summary of observations made by OPM on the results of its review, and discussed with CPSC's personnel director actions planned and taken to improve personnel operations.

⁵Merit staffing case files contain information related to the competitive examining process used in filling a position. The kind of information generally contained includes a copy of the vacancy announcement, the application packages of each applicant, the results of the entry examinations and the rating panel, the listing of qualified applicants, and documentation showing which applicant was selected for the position.

We did our work in Washington, D.C., from August 1996 to June 1997 in accordance with generally accepted government auditing standards. We requested comments on a draft of this report from the Chairman of CPSC and the Director of OPM. CPSC provided written comments, and OPM provided comments orally. Their comments are discussed at the end of this letter, and CPSC's written comments are reprinted in appendix III.

Problems Identified With Appointments Made by CPSC

Each of the six appointments we reviewed and that were the subject of allegations—while not involving burrowing in—involved one or more irregular or improper personnel actions. OPM generally agreed with our findings. Also, our review of an additional 18 appointments showed that in 9 cases, advanced salaries were provided due to the superior qualifications of the individuals. However, written justification to support the superior qualifications—as required by regulations—did not exist in four of the nine cases. CPSC officials told us that corrective actions have been, or are being, taken in each of the cases in which we found problems.

Six Appointments Involving Irregular or Improper Actions

The nature of the irregular or improper actions in the six appointments is summarized below and fully described in appendix I. We have redacted personal identifiers of the appointees in appendix I for privacy protection purposes.

- For three appointments, CPSC used improper candidate examination and selection procedures. In two of those cases, it failed to follow veterans preference rules. As a result, military veterans who were among the candidates for the two positions were not provided the preference consideration they were entitled to under veterans preference laws. In the third case, CPSC failed to process the applications for appointment in conformance with OPM instructions. As a result, CPSC made an invalid appointment.
- Three of the six appointments were made with advanced rates of pay based on the superior qualifications of the candidate, but we found no written documentation to justify such rates. As required by federal personnel regulations, agencies need to document the superior qualifications that justify an advanced rate of pay.
- Two appointments were made using term appointment authority in which, under justifiable circumstances, an agency can hire an individual for a specific period of time, generally not exceeding 4 years. We questioned whether the term appointment authority was properly used in these cases. According to information in the employees' personnel folders, the

justification cited for the term appointments was to provide expertise on special projects. However, the selecting official told us there were no special projects in her office.

We brought our findings to OPM's attention in December 1996 and asked OPM, in its oversight capacity for ensuring agencies' compliance with personnel laws and regulations, whether it agreed with our assessment and, if so, what corrective actions it would instruct CPSC to take. OPM responded to us in March 1997 and, in general, agreed with our findings. In regard to the two term appointments that did not appear to be justified, OPM officials said that CPSC informed them that because the agency's funding level was uncertain, it decided to use term rather than permanent appointments to meet staffing needs. The use of term appointments is authorized under such conditions and therefore OPM did not consider these appointments inappropriate. We agree that uncertain funding levels is a bona fide justification for using term appointments, but the documentation we reviewed did not indicate this rationale for these two term appointments.

After receiving OPM's response, we went back to CPSC and asked agency officials the basis for providing OPM with a new justification for the term appointments. CPSC officials said that the information in the two appointees' personnel folders citing special projects as the justification for the term appointments was incorrect. CPSC officials told us that when the two individuals were hired—in January 1995—the agency had already received its fiscal year 1995 appropriation. But the agency felt considerable uncertainty about the level of its 1996 funding due to the possibility of changed political priorities in Congress. Officials said that CPSC was concerned about committing permanent positions to the office in question because an overcommitment of resources could require a later reorganization. The officials acknowledged that they did not have any documentation contemporaneous with the two appointments to support the uncertain funding justification.

On one of the three superior qualification appointments, OPM determined that the individual was eligible for the advanced pay rate based on his previous highest salary and CPSC did not need to base the advanced pay rate on superior qualifications. OPM instructed CPSC to correct the personnel folder by deleting reference to superior qualifications.

OPM agreed with our remaining concerns and instructed CPSC to take certain actions. For example, in the two instances in which CPSC did not

follow veterans preference rules, CPSC was instructed to notify the veterans that they will receive priority consideration for the next available similar positions. OPM also instructed CPSC to fully document the superior qualifications of and justify an advanced rate of pay for the two remaining appointments made using the superior qualifications provision. CPSC reported to OPM in April 1997 that it took the instructed corrective actions, and OPM subsequently notified CPSC on May 28, 1997, that it was satisfied with the actions taken. We verified that the actions were taken. OPM's position on each of the six cases is detailed in appendix II. We have redacted personal identifiers of the appointees in appendix II for privacy protection purposes.

Additional Appointments Reviewed

CPSC, at our request, identified all appointments made between March 1994 and March 1997 in which advanced pay rates had been set. Excluding 3 advanced pay rate appointments that were part of our original review of the 6 allegations, CPSC identified 20 cases. In 2 of the 20 cases, the individuals had resigned from CPSC, their OPFs were not readily available for review, and CPSC officials were unable to recall the details of the cases. Of the remaining 18 cases, our review of the OPFs and discussions with CPSC officials showed that the advanced rates of pay were based on the superior qualifications of the individuals in 9 instances and on the highest previous salaries of the individuals in 8 instances. In one instance, the basis for the advanced rate of pay could not be determined from the employee's OPF.

Of the nine cases involving superior qualifications, five were justified at the time of appointment by written documentation as required by regulations. CPSC officials have since taken, or are currently taking, actions to correct the other four cases. In the eight cases involving highest previous salaries, supporting documentation was in the OPFs. In the remaining case where the basis for the advanced rate could not be determined, the CPSC personnel director told us that CPSC has since determined that the employee's pay was improperly set and that the correction would be to reset the pay at a lower rate. However, because this would result in a decreased salary level, and the error was made through no fault of the employee, CPSC has requested a variance (or exception) on this matter from OPM. According to the CPSC personnel director, at the time this report was prepared OPM had not responded to CPSC's request.

During a 2-week period beginning in September 1996, an OPM official—at the request of CPSC—reviewed the appointments of all senior executives and Schedule C employees employed at CPSC as of that time, as well as all appointment and promotion actions taken on CPSC employees since March 10, 1994. In total, the OPM official reviewed actions involving 167 employees and raised a variety of issues. Some were of an administrative nature, such as filing employees' security forms and fingerprint charts in OPFS when such forms should be part of the employees' security investigation files. Other issues were of a more significant nature. For example, OPM also identified, as we did, the four cases of advanced pay rates based on superior qualifications where supporting documentation did not exist. OPM also identified another case, not included in the scope of our review, in which an employee had improperly received a quality step increase (an increase in salary within the same pay grade based on quality performance.) OPM determined that the increase was improper because it was provided 8 weeks earlier than allowed by regulation. Federal regulations provide that such an increase cannot be given an employee who has received a quality step increase within the preceding 52 weeks. CPSC waived the 8 weeks of overpayment and is correcting the OPF.

According to CPSC officials, all of the personnel problems we and OPM identified were due to administrative errors or misunderstandings on the part of the personnel office staff. The CPSC personnel director told us that CPSC has taken numerous steps during our review to improve its personnel operations and ensure compliance with all applicable federal laws and regulations in the future. These include (1) providing additional training to all personnel staff, (2) developing a checklist to ensure that personnel actions are processed correctly, (3) developing written guidelines on processing and documenting appointments with advanced rates of pay, and (4) holding weekly staff meetings for personnel staff to discuss current regulations.

CPSC Was Delegated Examining Authority

In February 1996, OPM delegated examining authority to CPSC. Under delegated examining authority, agencies typically recruit, accept applications, score applicants on the basis of a review of education and experience, maintain registers of qualified applicants, create certificates listing the top-ranked candidates from the registers, and hire employees from those certificates. Thus, CPSC now has greater responsibility for personnel matters. While the problems CPSC had in the appointments we reviewed occurred before the delegation of examining authority, the

greater responsibility provided to CPSC by that authority makes it more important now that OPM carefully watch over CPSC personnel activities.

According to OPM, it uses oversight reviews of agencies' personnel activities to gauge and ensure their compliance with merit system principles, rules, and regulations. OPM annually selects and schedules agencies for these reviews. An OPM official said OPM is planning to review CPSC in 1998.

Conclusions

Irregular and improper personnel appointments have been made at CPSC over the past several years. CPSC has recognized the existence of such problems and began to take actions during the course of our review to correct previous improprieties and improve its personnel operations. Such actions were both necessary and appropriate, as the integrity of the civil service system rests on the consistent adherence to merit system principles, rules, and regulations. Also, CPSC now has greater responsibility for personnel actions under the examining authority delegated by OPM. Because of this, and because of the past problems, we believe it important for OPM to closely monitor CPSC's personnel operations to ensure that the agency is successful in its efforts to improve personnel operations.

Recommendation to the Director of OPM

To help ensure that CPSC's efforts to improve personnel operations are successful and result in adherence to merit system principles, rules, and regulations, we recommend that the Director of OPM include CPSC on OPM's next annual schedule of oversight reviews of agencies' personnel actions. CPSC should remain on OPM's schedule until OPM is satisfied that CPSC is maintaining personnel operations at a satisfactory level.

Agency Comments

On June 17, 1997, the Executive Director of CPSC provided us written comments on the draft (see app. III); and on June 19, 1997, the Deputy Chief of Staff of OPM provided us oral comments on the draft. CPSC agreed with our findings that errors in personnel processing occurred during the period covered by our review and noted that the agency has worked to implement the necessary corrective actions. OPM officials also agreed with our findings. The Deputy Chief of Staff pointed out that OPM plans to conduct an oversight review of CPSC personnel operations in 1998. He also said that CPSC plans to contract with OPM for an independent audit of CPSC's use of delegated authority.

As agreed with the Subcommittee, unless you publicly announce the report's contents earlier, we plan no further distribution of it until 15 days after the date of this report. We will then send copies to the Ranking Minority Member of the Subcommittee, the Chairman and Ranking Minority Member of the Senate Committee on Governmental Affairs, the Director of OPM, and the Chairman and other commissioners of CPSC. We will also make copies available to others on request.

Please contact me at (202) 512-9039 if you or your staff have any questions. Major contributors to this report were Richard W. Caradine, Assistant Director; N. Scott Einhorn, Evaluator-in-Charge; and Stephen J. Kenealy, Technical Advisor.

Sincerely yours,

A handwritten signature in black ink that reads "Michael Brostek". The signature is written in a cursive style with a large initial "M".

Michael Brostek
Associate Director, Federal Management
and Workforce Issues

Contents

Letter	1
Appendix I December 5, 1996, Referral Letter to the Director, Office of Personnel Management, From GAO	14
Appendix II March 3, 1997, Response From the Director, Office of Personnel Management, to GAO'S Referral Letter	33
Appendix III Comments From the U.S. Consumer Product Safety Commission	49

Abbreviations

CPSC	Consumer Product Safety Commission
FTE	full-time equivalent
IRS	Internal Revenue Service
OPM	Office of Personnel Management
OPF	Official Personnel Folder
PBGC	Pension Benefit Guaranty Corporation

December 5, 1996, Referral Letter to the Director, Office of Personnel Management, From GAO



United States
General Accounting Office
Washington, D.C. 20548

General Government Division

December 5, 1996

The Honorable James B. King
Director
Office of Personnel Management

Dear Mr. King:

In response to a request by the Chairman of the Subcommittee on Civil Service, House Committee on Government Reform and Oversight, we reviewed the appointments of selected individuals to positions at the Consumer Product Safety Commission (CPSC). The individuals were selected based on allegations we received that the individuals were hired improperly. On the basis of our file reviews and discussions with CPSC officials, we identified potential issues in the appointments of six individuals.

Given OPM's responsibility for overseeing agencies' compliance with personnel laws and regulations, we are referring the results of our work to you for further inquiry and disposition. Specifically, we would like to know whether OPM agrees with our assessment of the potential issues we identified in these six cases. Further, if you agree, we ask that you inform us of what remedial action OPM intends to take in each of these cases. Enclosed are detailed descriptions of the potential issues we identified in each of the six cases.

Please inform us of your initial disposition within 30 days of receiving this letter and of the final results of your inquiry when available. If you have any questions or need additional information, please call me on (202) 512-7680 or N. Scott Einhorn of my staff on (202) 512-9634.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Timothy P. Bowling".

Timothy P. Bowling
Associate Director, Federal Management
and Workforce Issues

Enclosures - 6

**Appendix I
December 5, 1996, Referral Letter to the
Director, Office of Personnel Management,
From GAO**

Note: Personal identifiers
have been redacted.

ENCLOSURE I

ENCLOSURE I

1. Name of Employee:
2. Current Position:
Current Title:
Current Series/Grade: 1035/GS-15
3. Current Appt. Date: March 11, 1994
4. Appointment Type: Excepted Appt., Sched. C
5. Problem Identified: --No documentation to justify superior qualifications appointment at step 8 of GS-15
6. Description of Problem:

Summary

According to the SF 50-B contained in [redacted] official personnel folder, she was appointed at step 8 of a GS-15 based on her superior qualifications. 5 CFR 531.203(b) addresses superior qualifications appointments and requires that an agency establish documentation sufficient to allow reconstruction of the action taken in each case and specifies the documentation that must be included. A CPSC management official provided us documents that show [redacted] salary and benefits from her previous job and which were used to justify her advanced salary at CPSC. However, we do not believe these documents meet the documentary requirements of 5 CFR 531.203(b). Also, the documents were dated between 1 and 2 weeks after [redacted] appointment and salary setting. We question whether [redacted] CPSC salary was appropriately determined.

Details

According to 5 CFR 531.203, new appointments are made at the minimum rate of the grade. However, a provision exists for a superior qualifications appointment, i.e., an appointment made above the minimum rate of the appropriate GS grade under authority of 5333 of title 5 United States Code because of the superior qualifications of the candidate or a special need of the agency for the candidate's services. In determining whether an employee should receive a superior qualifications appointment, and if so, at what level the employee's pay should be set, the agency must consider the possibility of authorizing a recruitment bonus as provided by 5 CFR 575. Each agency that makes superior qualifications appointments must establish documentation and recordkeeping procedures sufficient to allow reconstruction of the action taken in each case. Documentation must include:

**Appendix I
December 5, 1996, Referral Letter to the
Director, Office of Personnel Management,
From GAO**

ENCLOSURE I

ENCLOSURE I

--the superior qualifications of the individual or the special need of the agency;
--the factors considered in determining the individual's existing pay and the reason for setting pay at a rate higher than that needed to match existing pay; and
--the reasons for authorizing an advanced rate instead of, or in addition to, a recruitment bonus.

According to the SF 171 included in _____ official personnel folder, the lowest pay she would accept was \$85,000 per year. The SF 50-B contained in _____ official personnel folder shows that upon her appointment at CPSC her basic salary was set at the step 8 level of the GS-15 grade (\$82,149) and with the locality pay adjustment her salary totaled \$85,624. The SF 50-B shows that the advanced pay level was based on her superior qualifications appointment under regulation 5 CFR 531.203(b). However, CPSC officials could not provide supporting documentation for the superior qualifications determination as required by that regulation.

After inquiring about how _____ salary was set, CPSC management provided us with documents that had been recently found by CPSC officials and which were reportedly used in determining _____ salary. However, these documents were dated between 1 and 2 weeks after _____ was appointed and her salary set and we do not believe they meet the documentation requirements of 5 CFR 531.203(b).

Two of the documents, both dated March 18, 1994, were memos from the CPSC Chief of Personnel Operations to the CPSC Associate Executive Director. One of these memos showed that _____ salary at her previous job was \$74,125; medical, dental, and vision benefits totaled \$10,000; a flexible benefits package totaled \$6,500; relocation costs totaled \$4,000; and a cash bonus totaled \$1,500. Altogether, the total salary and benefits from her previous employer totaled \$96,125. In the memo the Chief stated that this information had been provided to him by telephone by one of _____ subordinates at CPSC and the Chief was asking the Associate Executive Director--via the memo--what _____ starting salary should be. The other memo was a revised copy of the first memo. It showed handwritten adjustments striking out the \$6,500 in flexible benefits, subtracting the \$4,000 in relocation costs, and revising the total salary and benefits accordingly to \$85,625. The date and signature of _____ was at the bottom of the memo as well as a handwritten note that stated "salary set at GS-15/8 = \$85,624."

A third memo dated March 24, 1994, was from the Associate Executive Director to Chairman Ann Brown. The memo stated in part that _____ present base salary, 1993 annual bonus, and flexible benefits package equal \$85,625 per annum. Therefore, this office recommends appointing her at the GS-15, step 8 level, \$85,624 per annum, in order to attract her to the Federal service." An approval line was at the end of the memo and was signed by Ann Brown and dated April 1, 1994.

We do not believe the documents provided to us meet all of the documentation requirements of

**Appendix I
December 5, 1996, Referral Letter to the
Director, Office of Personnel Management,
From GAO**

ENCLOSURE I

ENCLOSURE I

5 CFR 531.203(b). For example, there was no documented evidence that consideration was given to providing a recruitment bonus and there were no documented reasons for authorizing an advanced rate instead of, or in addition to, a recruitment bonus as specified in the regulation. Also, regarding the documents that were provided, we were unable to find a regulation in the Code of Federal Regulations addressing the consideration of an individual's benefit package from the previous employer when making a basic pay level determination for the individual as a new government employee.

We question whether salary was appropriately set because (1) the documentation requirements for her superior qualifications appointment, as specified in 5 CFR 531.203, were not met; (2) the value of a cash bonus and benefits were considered in determining the basic pay level; and (3) the documentation supporting her previous salary and benefits level were dated 1 to 2 weeks after her appointment and salary had been set.

**Appendix I
December 5, 1996, Referral Letter to the
Director, Office of Personnel Management,
From GAO**

ENCLOSURE II

ENCLOSURE II

1. Name of Employee:
2. Current Position:
Current Title:
Current Series/Grade: 340/00
3. Current Appt. Date: January 7, 1996
4. Appointment Type: SES Ltd. Term Appt. NTE December 31, 1998
5. Problem Identified: --May 1995 term appointment to GS-15: had no competitive status and procedures for considering nonstatus applicants were not followed
6. Description of Problem:

Summary

Before current SES appointment, he had obtained a 2-year term appointment as GS-15, effective May 14, 1995. Our analysis of CPSC records showed that did not have competitive status and that CPSC did not follow the appropriate procedures in selecting and appointing the 2-year term appointment. As a result, we believe that appointment during the period May 14, 1995, through January 6, 1996, may have been improper.

Details

Term appointments are regulated by 5 CFR 316 and can be made noncompetitively or competitively. If made noncompetitively, the person selected must be eligible for career or career-conditional employment or meet one of several other special criteria listed in 5 CFR 316.302. If made competitively, the person selected must either be on an appropriate OPM register or the agency must have followed procedures set out in 5 CFR 333 that authorizes outside the register appointments.

In reviewing official personnel folder, we were unable to find evidence that he met any of the criteria which would have allowed his appointment on a noncompetitive basis. Therefore, CPSC would have been required to follow the procedures set out in 5 CFR 333. Among those procedures is providing public notice for term vacancies, including notifying OPM and state employment offices of the vacancy so that fair and open competition can be offered to all nonstatus applicants. After receipt of applications, the agency may elect to rate and rank them on their own and develop a certificate of eligibles.

5

**Appendix I
December 5, 1996, Referral Letter to the
Director, Office of Personnel Management,
From GAO**

ENCLOSURE II

ENCLOSURE II

In case, CPSC proceeded as though it were applying its internal merit promotion processes. For example, rather than notifying OPM and state employment offices of the vacancy as required by 5 CFR 333, the position was advertised CPSC-headquarters only. According to the SF 50-B, was selected from This denotation normally refers to a civil service certificate number. However, we were unable to find a civil service certificate. Rather, was selected from a CPSC Personnel Office Certificate of Eligibles for the Merit Promotion Program. Since was a nonstatus applicant (his previous federal appointments did not confer competitive status), his appointment to the term position could only legitimately have occurred after fair and open competition for positions filled outside the register as required by 5 CFR 333. Since that regulation was not followed, we believe appointment during the period May 14, 1995, through January 6, 1996, may have been improper.

**Appendix I
December 5, 1996, Referral Letter to the
Director, Office of Personnel Management,
From GAO**

ENCLOSURE III

ENCLOSURE III

1. Name of Employee:
2. Current Position:
Current Title:
Current Series/Grade: 1082/GS-13
3. Current Appt. Date: June 1, 1996
4. Appointment Type: Extension of Term Appt. NTE June 1, 1998
5. Problems Identified: --Veteran Passover
--Ranking occurred before announcement closed
6. Description of Problems:

Summary

obtained a 2-year term appointment effective May 31, 1994, that was extended for an additional 2 years. According to a CPSC summary rating sheet, 15 people were rated for the original term position and 5 of them received scores of 90 or higher. All five were placed on the certificate of eligibles and was selected. However, one of the five was a veteran who claimed a five-point veteran's preference based on his service in the Marine Corps. According to 5 CFR 333.202, the veteran's score and his eligibility for five additional preference points should have placed him at the top of the referral certificate. If CPSC would then have chosen to pass over the veteran and select someone else on the referral certificate, then according to 5 CFR 333.203(b) CPSC would have had to record its reasons for passing over the veteran and furnish a copy of those reasons to the veteran or his representative on request.

One copy of the vacancy announcement for the term position showed a closing date of May 20, 1994, but other copies of the vacancy announcement showed a closing date of May 27, 1994. According to OPM, the correct closing date was May 27, 1994. However, the rating process occurred before then, and the certificate of eligibles from which was selected was dated May 25, 1994, 2 days before the announcement had closed.

Details

Passing Over a Veteran

In this case CPSC chose to use 5 CFR 333 for recruiting and selecting for a term appointment outside the register. Further, CPSC used the numerical ranking option allowed by

ENCLOSURE III

ENCLOSURE III

5 CFR 333.202. 5 CFR 333.103--which addresses veteran preference in temporary and term appointments outside the register--requires that when numerical scores are used in evaluation and referral, the agency shall grant five additional points to preference eligibles under sections 2108(3)(A) and (B) of title 5, United States Code.

One of the applicants for the term position was [redacted] claimed a five-point preference based on his active duty in the U.S. Marine Corps during the period March 1971 through December 1974. According to the timing of his active duty service, he was eligible for five additional preference points under 5 CFR 333.103. However, CPSC did not recognize [redacted] eligibility for the five additional preference points. According to the CPSC summary rating sheet, four applicants scored 90 points--including both [redacted] --and one applicant scored 93 points. These five applicants were the only ones put on the referral certificate and they were listed in alphabetical order. According to 5 CFR 333.202, the eligibles on the certificate should have been ordered by their augmented ratings (scores). Had this regulation been followed, then CPSC officials would have placed [redacted] at the top of the referral certificate. Also, according to 5 CFR 333.203, the veteran applicant could not have been passed over for another on the referral certificate without a written justification and without notifying the veteran or his representative on request as to why he was passed over in order to select someone else.

Ranking and Selection Occurred Before Vacancy Announcement Closed

According to one copy of the vacancy announcement, announcement number [redacted] the closing date for receiving applications delivered in person to CPSC was May 20, 1994, and applications mailed to CPSC were to be postmarked by that date. However, we found other copies of the vacancy announcement that showed the closing date was 1 week later, May 27, 1994. We asked OPM officials if they had a record of the vacancy announcement and, if so, what was the closing date. OPM officials told us the vacancy announcement is included in their Federal Jobs Opportunities data base and the proper closing date was May 27, 1994.

According to a summary rating sheet dated May 25, 1994, 15 applicants--including [redacted] and [redacted] --were rated (scored). The highest scoring applicants, those scoring 90 or higher, were then placed on a certificate of eligibles from which [redacted] was selected. The certificate of eligibles was also dated May 25, 1994.

We found a second summary rating sheet included in CPSC's files that is undated but states it is for vacancy announcement number [redacted]. The names of 14 additional applicants are on the second summary rating sheet. Although the summary rating sheet is undated, our review of CPSC's files showed that 1 of the 14 applications was date and time stamped by CPSC showing that it was received on May 27, 1994. Since this applicant's name was included on the undated summary rating sheet, the summary rating sheet likely was prepared on or after May 27, 1994.

**Appendix I
December 5, 1996, Referral Letter to the
Director, Office of Personnel Management,
From GAO**

ENCLOSURE III

ENCLOSURE III

2 days after the certificate of eligibles had already been established. We noted that another application had been date and time stamped by CPSC showing it was received on May 24, 1994, 1 day before the certificate of eligibles had been established. However, this application was not considered with the 15 others that were rated on the first summary rating sheet. Rather, it was 1 of the 14 additional applications rated on the second summary rating sheet. Our review showed this applicant received an initial rating (score) of 90 but that the rating was subsequently lowered to 88. None of the 14 applicants on the second summary rating sheet scored higher than 88 and none were included on the certificate of eligibles dated May 25, 1994.

In conclusion, in filling this term position, CPSC may have violated the preference rights of veterans. Further, CPSC officials conducted a rating process, failed to consider at least one applicant, and prepared a certificate of eligibles prior to the closing date of the vacancy announcement. There is evidence in the file that a second rating exercise was conducted for the additional applications who were not considered during the first rating exercise. However, since the second rating process occurred after the certificate of eligibles had already been prepared, we question the fairness of consideration given to the applicants during the second rating exercise. Also, given the possible violation of veterans rights, we question whether the appointment of
was proper.

Appendix I
December 5, 1996, Referral Letter to the
Director, Office of Personnel Management,
From GAO

ENCLOSURE IV

ENCLOSURE IV

1. Name of Employee:
2. Current Position:
Current Title:
Current Series/Grade: 1035/GS-14
3. Current Appt. Date: January 3, 1996
4. Appointment Type: Career
5. Problems Identified:
 - Whether conversion to career appointment on one year anniversary of separation from legislative branch complies with Ramspeck Act
 - No documentation to justify superior qualifications appointment at step 7 of GS-14
 - Previous appt. was term appt. as to provide expertise to the office on special projects; no special projects existed
6. Description of Problems:

Summary

Before current career appointment as CPSC he had been appointed to the same job under a 2-year term appointment. The 2-year term appointment was made based on eligibility under Ramspeck Act authority. The following year, was converted from the term appointment to a career appointment, again based on his eligibility under Ramspeck Act authority. However, we are uncertain whether or not his conversion to career appointment on the one year anniversary of his separation from the legislative branch complies with the requirements of the Ramspeck Act.

When obtained his 2-year term appointment at CPSC, according to the SF 50-B in his official personnel folder, he was appointed at step 7 of a GS-14 based on his superior qualifications. 5 CFR 531.203(b) addresses superior qualifications appointments and requires that an agency establish documentation sufficient to allow reconstruction of the action taken in each case and specifies the documentation that must be included. CPSC personnel officials could not provide us with the documentation required by regulation that would support the superior qualifications appointment.

10

**Appendix I
December 5, 1996, Referral Letter to the
Director, Office of Personnel Management,
From GAO**

ENCLOSURE IV

ENCLOSURE IV

Also, according to 5 CFR 316.301, which addresses the purpose and duration of term appointments, an agency may make a term appointment when the need for an employee's services is not permanent. According to the SF 50-B in [redacted] official personnel folder, the reason for the term appointment was to provide expertise to the office on special projects. However, the selecting official-- [redacted] --told us that she was unaware that special projects were used to justify the term appointment and that she was unaware of any special projects in her office. We determined that the [redacted] job had previously been a permanent position and had been changed to a term position before again becoming a permanent position. We asked the selecting official why a [redacted] job would be classified as a term rather than a permanent position. According to her, she was advised by CPSC personnel officials that making the job a term position would be a good way of trying out the individual selected for the position. Then, if the individual performed well, the position could be made permanent.

Since there were no special projects to justify the term position and given the permanency of the position as evidenced by (1) the job having previously been classified as a permanent position and (2) [redacted] conversion-in-place from a term appointment to a career appointment, we question whether the use of a term appointment was appropriate. Also, we are uncertain whether or not his career appointment complied with the requirements of the Ramspeck Act.

Details

Ramspeck Act Authority

According to title 5 U.S.C. 3304(c), often referred to as the Ramspeck Act, an individual who served (1) for at least 3 years in the legislative branch in a position in which he was paid by the Secretary of the Senate or the Clerk of the House of Representatives; or (2) for at least 4 years as a secretary or law clerk, or both, to a justice or judge of the United States acquires a competitive status to the competitive service if he is involuntarily separated without prejudice from the legislative or judicial branch, passes a suitable noncompetitive examination, and transfers to the competitive service within 1 year of the separation from the legislative or judicial branch. In [redacted] case, information in his official personnel folder showed that on January 3, 1995, he was involuntarily separated without prejudice from his position as Legislative Director for former U.S. Representative [redacted]. The SF 50-B contained in his official personnel folder shows that, using Ramspeck Act authority, CPSC appointed him to his current career position on January 3, 1996. Since [redacted] was separated on January 3, 1995, we are uncertain whether his appointment on January 3, 1996, complies with the requirement in the Ramspeck Act that the transfer to the competitive service take place within 1 year of the date of separation from the legislative (or judicial) branch.

ENCLOSURE IV

ENCLOSURE IV

No Documentation to Support Superior Qualifications Appointment

According to 5 CFR 531.203, new appointments are generally made at the minimum rate of the grade. However, appointments can be made at a rate above the minimum rate of the appropriate GS grade under authority of 5333 of title 5 United States Code because of the superior qualifications of the candidate or a special need of the agency for the candidate's services. In determining whether an employee should receive a superior qualifications appointment, and if so, at what level the employee's pay should be set, the agency must consider the possibility of authorizing a recruitment bonus as provided in section 575 of 5 CFR. Each agency that makes superior qualifications appointments must establish documentation and recordkeeping procedures sufficient to allow reconstruction of the action taken in each case. Documentation must include:

- the superior qualifications of the individual or the special need of the agency;
- the factors considered in determining the individual's existing pay and the reason for setting pay at a rate higher than that needed to match existing pay; and
- the reasons for authorizing an advanced rate instead of or in addition to a recruitment bonus.

The SF 50-B contained in [redacted] official personnel folder showed that upon his 2-year term appointment at CPSC his basic salary was set at the step 7 level of the GS-14 grade (\$67,955) and with the locality pay adjustment his salary totaled \$70,829. The SF 50-B showed that the advanced pay level was based on his superior qualifications appointment under regulation 5 CFR 531.203(b). However, CPSC officials could not provide supporting documentation for the superior qualifications determination as required by that regulation.

A CPSC personnel official told us that [redacted] CPSC salary level was set based on the salary level of [redacted] previous job. We were referred to a transcript of [redacted] service to the House of Representatives issued to CPSC by the Office of the Chief Administrative Officer of the U.S. House of Representatives and contained in [redacted] official personnel folder. The transcript showed that [redacted] salary fluctuated during the time of his service to the House of Representatives. For example, according to the transcript, on the day of his initial House of Representatives appointment, February 25, 1989, his annual salary was \$28,000. On January 1, 1994, his annual salary was shown to be \$56,000. The highest salary level shown was on August 1, 1994, at \$89,500. While the House of Representatives transcript provided [redacted] salary history, CPSC's rationale for setting his base salary at \$67,955 is unclear.

Questionable Use of Term Appointment

According to 5 CFR 316.301, reasons for making a term appointment include, but are not limited to: project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for

**Appendix I
December 5, 1996, Referral Letter to the
Director, Office of Personnel Management,
From GAO**

ENCLOSURE IV

ENCLOSURE IV

placement of employees who would otherwise be displaced from other parts of the organization. According to the SF 50-B contained in [redacted] official personnel folder, his term appointment was based on providing expertise to the office on special projects. We interviewed the selecting official, who is the [redacted] and she said she knew of no special projects in her office. She said she hired [redacted] under a term appointment because the former Director of CPSC's Personnel Office told her that term appointments can be used to try out new hires. Then, if the new hire doesn't perform well, the employee can be removed at the end of the term appointment. We found no regulation that allows the use of term appointments as a way of trying out a new employee. In fact, the current Director of CPSC's Personnel Office and her Operations Manager told us that using term appointments for trying out new employees is inappropriate.

In conclusion, we question (1) whether [redacted] salary was properly determined because the documentation requirements for his superior qualifications appointment were not met; and (2) whether the term appointment authority provided by 5 CFR 316.301 may have been misused because the term appointment was justified on the basis of special projects and there were no special projects. In addition, we are uncertain whether or not [redacted] career appointment complied with the requirements of the Ramspeck Act.

Appendix I
December 5, 1996, Referral Letter to the
Director, Office of Personnel Management,
From GAO

ENCLOSURE V

ENCLOSURE V

1. Name of Employee:
2. Current Position:
Current Title:
Current Series/Grade: 1035/GS-11
3. Current Appt. Date: January 4, 1995
4. Appointment Type: Term Appt. NTE January 1, 1997
5. Problems Identified:
-No documentation to justify superior qualifications appointment at step 2 of GS-11

-Reason for term appt. is to provide expertise to the office on special projects; no special projects existed
6. Description of Problem:

Summary

According to the SF 50-B, [redacted] was appointed at step 2 of a GS-11 based on superior qualifications. 5 CFR 531.203(b) addresses superior qualifications appointments and requires that an agency establish documentation sufficient to allow reconstruction of the action taken in each case and specifies the documentation that must be included. CPSC personnel officials could not provide us with the documentation required by regulation that would support the superior qualifications appointment. Also, according to 5 CFR 316.301, which addresses the purpose and duration of term appointments, an agency may make a term appointment when the need for an employee's services is not permanent, such as when there is a need for special projects. According to the SF 50-B in [redacted] official personnel folder, the reason for the term appointment was to provide expertise to the office on special projects. However, the selecting official—the [redacted]—told us that she was unaware of any special projects in her office.

Details

No Documentation to Support Superior Qualifications Appointment

According to 5 CFR 531.203, new appointments are generally made at the minimum rate of the grade. However, appointments can be at a rate above the minimum rate of the appropriate GS grade under authority of 5333 of title 5 United States Code because of the

ENCLOSURE V

ENCLOSURE V

superior qualifications of the candidate or a special need of the agency for the candidate's services. In determining whether an employee should receive a superior qualifications appointment, and if so, at what level the employee's pay should be set, the agency must consider the possibility of authorizing a recruitment bonus as provided by 5 CFR 575. Each agency that makes superior qualifications appointments must establish documentation and recordkeeping procedures sufficient to allow reconstruction of the action taken in each case. Documentation must include:

- the superior qualifications of the individual or the special need of the agency;
- the factors considered in determining the individual's existing pay and the reason for setting pay at a rate higher than that needed to match existing pay; and
- the reasons for authorizing an advanced rate instead of or in addition to a recruitment bonus.

According to the SF 50-B, [redacted] was appointed to her term position on January 4, 1995, at step 2 of the GS-11 grade, or \$36,214 including locality adjustment. The SF 50-B shows that a superior qualifications appointment was made under regulation 531.203(b). However, CPSC officials could not provide supporting documentation for the superior qualifications determination as required by that regulation. Had [redacted] appointment been made at the step 1 level of the GS-11 grade her salary, including locality adjustment, would have been \$35,045. [redacted] pay stub from her previous employer is dated December 16, 1994, and shows a year-to-date gross pay amount of \$30,823.

Questionable Use of Term Appointment

According to 5 CFR 316.301, reasons for making a term appointment include, but are not limited to: project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization. According to the SF 50-B contained in [redacted] official personnel folder, her term appointment was based on providing expertise to the office on special projects. However, according to the selecting official- [redacted] -she knew of no special projects.

In conclusion, we believe that the documentation requirements for [redacted] superior qualifications appointment were not met and therefore the appropriateness of her salary setting is questionable. Also, we believe that the term appointment authority provided by 5 CFR 316.301 may have been misused in [redacted] case because the term appointment was justified on the basis of special projects and there were no special projects.

**Appendix I
December 5, 1996, Referral Letter to the
Director, Office of Personnel Management,
From GAO**

ENCLOSURE VI

ENCLOSURE VI

1. Name of Employee:
2. Current Position:
Current Title:
Current Series/Grade: 1035/GS-13
3. Current Appt. Date: December 4, 1995
4. Appointment Type: Temporary appt. extended to NTE December 3, 1996
5. Problems Identified: --Veteran passover
--Improper panel procedure
6. Description of Problems:

Summary

obtained a temporary appointment effective December 4, 1995. The position was advertised as not to exceed (NTE) 1 year and according to SF 50-B, her initial appointment was NTE September 30, 1996. Her appointment has since been extended to NTE December 3, 1996.

According to a CPSC summary rating sheet, 11 people were rated for the position and 4 of them were certified with scores of 70 or higher, including

score was the third highest of the four. A resulting certificate of eligibles was not in the file but the summary rating sheet states that the panel members agreed to certify those candidates with a score of 70 or above. The highest scoring candidate was a veteran who claimed a five point veteran's preference. According to 5 CFR 333.202, based on the veteran's score and his eligibility for five additional preference points, it appears that the veteran would have been placed at the top of the referral certificate. If CPSC then chose to pass over the veteran and select someone else on the referral certificate, then according to 5 CFR 333.203(b) CPSC would have had to record its reasons for passing over the veteran and furnish a copy of those reasons to the veteran or his representative on request.

According to CPSC's General Counsel, in this case, following the scoring results, the former CPSC Personnel Director asked the panel members to re-score the applicants and take into account "recency of experience." OPM officials told us that at the time of the rating process "recency of experience" was not a factor to be considered. They said that "recency of experience" did not become a factor of consideration until early 1996. According to CPSC's General Counsel, two of the three panel members agreed to re-score the applicants taking into

16

**Appendix I
December 5, 1996, Referral Letter to the
Director, Office of Personnel Management,
From GAO**

ENCLOSURE VI

ENCLOSURE VI

account "recency of experience" but the third panel member refused to do so. The results of the re-scoring and a resulting certificate of eligibles were not in the file but according to CPSC's General Counsel, [redacted] scored higher than the veteran following the re-scoring and she was selected and appointed to the position. Also according to CPSC's General Counsel, later, in an effort to validate the rating (scoring) and selection process, a new panel was established to rate and rank the applicants. Again, [redacted] scored higher than the veteran. We found a CPSC summary rating sheet and certificate of eligibles that resulted from the new panel's efforts. The certificate of eligibles showed that [redacted] was selected for the position. However, both the summary rating sheet and the certificate of eligibles are dated 2 days after [redacted] had been appointed to the position.

Details

Passing Over a Veteran

In this case CPSC chose to use 5 CFR 333 for recruiting and selecting for a temporary appointment outside the register. Further, CPSC used the numerical ranking option allowed by 5 CFR 333.202. In using the numerical ranking option, 5 CFR 333.103--which addresses veteran preference in temporary and term appointments outside the register--requires that when numerical scores are used in evaluation and referral, the agency shall grant five additional points to preference eligibles under sections 2108(3)(A) and (B) of title 5, United States Code.

One of the applicants for the temporary position was [redacted] claimed a five-point preference based on his military duty. According to a CPSC summary rating sheet, one applicant scored 70 points, one applicant-- [redacted] --scored 78 points, one applicant scored 85 points, and a fourth applicant-- [redacted] --scored 86 points, which included his 5 preference points. A referral certificate listing these four applicants was not found and, as a result of the intervention of the former CPSC Personnel Director in the rating and ranking process, a certificate may not have been prepared. If a certificate was prepared, then we believe that [redacted] should have been listed first because, according to 5 CFR 333.202, the listing of eligibles on the certificate should be ordered by their augmented ratings (scores). Also, according to 5 CFR 333.203, a veteran applicant cannot be passed over for another on the referral certificate without written justification for passing over the veteran and without notifying the veteran as to why he was passed over in order to select someone else. [redacted] was selected for the position and there is no evidence in the files that written justification for passing over the veteran was prepared.

ENCLOSURE VI

ENCLOSURE VI

Improper Panel Process

A panel of three CPSC employees was established to review and rate the 11 applicants found to be at least minimally eligible for the position. According to written panel instructions, it was the panel's responsibility to rate and rank the candidates by applying the CPSC Crediting Plan to determine those who are best qualified. According to CPSC's Crediting Plan, all minimally qualified applicants were to obtain a score of 70 (on a scale to 100). From that point, the scores were to be adjusted upward based on each applicants' relative experience. However, the panel did not follow these procedures. Rather, they gave raw scores for the experience level shown for each of four knowledge, skills, and abilities defined in the vacancy announcement. They then converted those raw scores based on a 100-point scale. A CPSC summary rating sheet showed that 4 of the 11 applicants obtained total raw scores of 23 points or higher while the other 7 applicants obtained total raw scores ranging from 2 to 19. The summary rating sheet showed that the four highest total raw scores were converted to scores relative to a 100-point scale (through the use of a conversion table). The four converted scores were 70, 78, 85 and 86.

scored the 86 and his 5 veteran preference points were included in that score. The summary rating sheet did not show converted scores for the other 7 applicants whose raw scores were below 23. Based on the conversion results of the 4 highest raw scores, the lower raw scores, if they had been converted, would have been less than 70. As a result, we do not believe that the rating process conformed to CPSC's Crediting Plan that required that all minimally qualified applicants obtain scores of 70 and be adjusted upward from that point in determining the best qualified applicants.

The summary rating sheet was signed by two of the three panel members and dated Friday, December 1, 1995. According to the summary rating sheet, the panel members agreed to certify those candidates with a numerical score of 70 and above. However, we were unable to find a referral certificate in the file. According to the CPSC General Counsel, following the scoring results, the former CPSC Personnel Director asked the panel members to re-score the applicants because, through oversight, the panel had not been instructed to consider the applicants "recency of experience" when evaluating the applicants experience and determining scores. However, OPM officials told us that "recency of experience" was not a factor and shouldn't have been considered.

The General Counsel told us that two of the three panel members agreed to re-score the applicants and consider each applicant's "recency of experience" but the third panel member refused to do so. According to the General Counsel, as a result of the re-scoring, scored higher than and was selected and appointed to the position. Again, there was no referral certificate in the file reflecting the results of the re-scoring. However, according to SF 50-B, her appointment was effective on Monday, December 4, 1995. The CPSC General Counsel told us that one of the panel members lodged a complaint about the rating and ranking process with CPSC's Office of General Counsel. He said that at a subsequent meeting attended by him and CPSC Chairman Ann Brown,

**Appendix I
December 5, 1996, Referral Letter to the
Director, Office of Personnel Management,
From GAO**

ENCLOSURE VI

ENCLOSURE VI

a decision was made to establish a new panel in an effort to validate the re-scoring results of the first panel. We found a summary rating sheet in the file signed and dated by all the members of the new panel. According to the summary rating sheet, [redacted] scored highest with a converted score of 85. [redacted] scored third highest with a converted score of 75, after adding in his 5 preference points. According to the summary rating sheet, the panel members agreed to certify those candidates with a numerical score of 80 and above. The summary rating sheet was dated December 6, 1995. We also found a referral certificate in the file. The referral certificate was also dated December 6, 1995, and listed [redacted] and one other applicant who had obtained a converted score of 81 as a result of the evaluation process carried out by the new panel. According to the referral certificate, [redacted] was selected for the position on December 6, 1995. However, [redacted] had already been appointed to the position 2 days earlier.

In conclusion, we question whether [redacted] appointment was proper because (1) a veteran initially scored highest and may have been passed over; (2) the panel process was improperly conducted in that multiple panels were held, CPSC's Crediting Plan was not complied with, and inappropriate instructions regarding the consideration of recency of experience were provided; and (3) [redacted] appears to have been appointed 2 days before the selection certificate was prepared.

(410081)

19

March 3, 1997, Response From the Director, Office of Personnel Management, to GAO'S Referral Letter



OFFICE OF THE DIRECTOR

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

MAR 3 1997

Mr. Timothy P. Bowling
Associate Director, Federal Management
and Workforce Issues
United States General Accounting Office
Washington, DC 20548

Dear Mr. Bowling:

This is in response to your request that the Office of Personnel Management review six appointments made by the Consumer Product Safety Commission (CPSC). In addition to reviewing your staff's findings, we conducted our own onsite review of the appointments. The enclosures to this letter contain our findings and required actions as well as our letter to CPSC.

Top CPSC management acknowledges that these cases indicate problems in the CPSC human resources management (HRM) program. More importantly, they have committed themselves to correcting the problems and building a strong HRM program. As a start, they hired a new personnel director, recently contracted for onsite technical assistance and have planned extensive training to increase the competency of the personnel staff.

While we commend these actions, we also point out to CPSC the need to pay closer attention to appointment actions, and especially to how veteran applicants are treated in the appointing process. Also, we remind them of the need to operate their human resource system in accordance with merit system principles.

We ask that the personal privacy of the individuals mentioned be protected, should the release of our findings outside of GAO or Congress be required.

If you or your staff have any questions, please call me or Ms. Carol Okin, Associate Director, Office of Merit Systems Oversight and Effectiveness, on (202) 606-1575.

Sincerely,

A handwritten signature in cursive script that reads "James B. King".

James B. King
Director

Enclosures

**Appendix II
March 3, 1997, Response From the Director,
Office of Personnel Management, to GAO'S
Referral Letter**

Note: Personal identifiers
have been redacted.

Enclosure

Case No. 1

Office of the Executive Director

GAO FINDING

Problem: No documentation to justify appointment at step 8 of GS-1035-15 based on superior qualifications.

According to the Notification of Personnel Action (SF 50-B) contained in [redacted] official personnel folder, CPSC appointed her to GS-1035-15 step 8 based on her superior qualifications on March 11, 1994. OPM regulation (5 CFR 531.203(b)) addresses superior qualifications appointments and requires that an agency establish documentation sufficient to allow reconstruction of the action taken in each case and specifies the documentation that must be included. A CPSC management official provided copies of the documents used to justify [redacted] salary and benefits. GAO does not believe the documents meet the documentary requirements of 5 CFR 531.203(b). The documents were dated between 1 and 2 weeks after [redacted] appointment. GAO questions whether [redacted] CPSC salary was appropriately determined.

OPM FINDING

Based on the documentation available, we see no irregularity in the pay received by [redacted] upon her appointment to CPSC as a Schedule C appointee on March 11, 1994. As authorized by 5 U.S.C. 5333 and OPM regulation 5 CFR 531.203, agencies may make appointments at advanced rates at all General Schedule grades based on superior qualifications or special need of the agency for the candidate's services. The regulation (5 CFR 531.203 (b) (3)) requires that agencies, when making these appointments, document the superior qualifications or special needs of the agency that justify an advance rate and the reason for setting a rate higher than the individual's existing pay, as well as how they considered authorizing a recruitment bonus.

The documentation maintained to justify [redacted] superior qualifications is deficient. The records include [redacted] Standard Form 171 and a memo to Chairman Brown dated March 24, 1994. These documents by themselves do not adequately support CPSC's position that [redacted] superior qualifications because of her experience in advertising, marketing, and public relations.

**Appendix II
March 3, 1997, Response From the Director,
Office of Personnel Management, to GAO'S
Referral Letter**

CONCLUSION

CPSC used its authority under (5 CFR 531.203) to determine what pay level to set when making superior qualifications appointment. However, it did not meet the requirement of 5 CFR 531.203 (b)(4) adequately document superior qualifications and the reasons for setting her pay at higher rate.

REQUIRED ACTION

CPSC must fully document superior qualifications and justify an advanced rate of pay and submit the documentation to the Office of Personnel Management within 60 days of receipt of this report.

**Appendix II
March 3, 1997, Response From the Director,
Office of Personnel Management, to GAO'S
Referral Letter**

Case No. 2

Office of the Executive Director

GAO FINDINGS

Problem: Failure to process appointment as
in accordance with proper examining procedures.

CPSC did not follow the requirements of 5 CFR 316.302 or 5 CFR 333.102 when it selected and appointed to a 2-year term appointment as on May 14, 1995. As a result, appointment during the period May 14, 1995, through January 6, 1996, may have been improper.

OPM FINDINGS

On April 28, 1995, CPSC's Executive Director initiated a recruitment request to fill the position of GS 340-15, under a term appointment (not to exceed 2 years.) The reason for the term appointment was to provide support to the Office of the Executive Director while the permanent was on an extended detail. CPSC announced the vacancy on May 3, 1995, and limited the area of consideration to CPSC headquarters. OPM regulation 5 CFR 316.302 permits agencies to make term appointments outside the register. Regulation 5 CFR 333.102, which governs recruiting and making appointments outside the register require agencies making term appointments to notify OPM job information centers and State Employment Service offices. CPSC failed to follow these instructions by restricting the area of consideration to CPSC headquarters and not issuing the proper public notices. then serving on a Schedule C appointment in the position of the GS-340-15 Step 10, applied for the position along with two other CPSC employees. CPSC failed to process the applications in conformance with OPM instructions Bulletin No. 40 which directs agencies to submit applications to the OPM Washington Service Center for ranking. The applications were not referred to OPM for ranking as required by the instructions. Instead, CPSC rated all the applicants qualified and referred them to the selecting official for consideration. was selected and converted to the position of GS 301-15 step 10 on May 14, 1995. He served in this term position until January 7, 1996 when he received a SES Limited Term Appointment.

**Appendix II
March 3, 1997, Response From the Director,
Office of Personnel Management, to GAO'S
Referral Letter**

CONCLUSION

CPSC erroneously converted [redacted] to a term appointment.

REQUIRED ACTION

The OPM Washington Service Center has determined that [redacted] may be credited with service performed under the erroneous term appointment as a de facto employee and communicated this to CPSC in a letter dated February 10, 1997. To correctly document the creditable service for this period of erroneous employment, CPSC must process a Standard Form (SF) 50, Notification of Personnel Action, to terminate [redacted] Schedule C appointment. That termination must be effective corresponding with the original appointment limitations. The subsequent term appointment (May 14, 1995- January 7, 1996) given to [redacted] is to be canceled, following the procedures found in The Guide to Processing Personnel Actions. That term appointment was improper, once canceled, the conversion to the SES term appointment on January 1, 1996 was an incorrect nature of action. Therefore, CPSC must correct the action to show the appointment, rather than conversion to appointment. CPSC must retain the cancellation actions, along with those actions canceled, in [redacted] Official Personnel Folder (OPF) so that appropriate service credit can be documented.

A copy of the February 10, 1997 letter should be retained in the OPF, filed on the right-hand side as a long term document. CPSC must submit a copy of the cancellation and correction SF-50's to the Office of Personnel Management within 60 days of receipt of this report.

Appendix II
March 3, 1997, Response From the Director,
Office of Personnel Management, to GAO'S
Referral Letter

Case No. 3

Office of the Executive Director
Office of Information and Public Affairs

GAO FINDINGS

Problems: Veteran Passover
 Irregularities in rating and ranking procedures

CPSC appointed to a 2-year term appointment on May 31, 1994. When making this appointment, CPSC officials failed to apply veterans preference, and rated employees prior to the date the announcement closed.

CPSC's rating official rated 15 applications. Five applicants, including were placed on the certificate of eligibles and was selected. However, one of the five candidates was a veteran who claimed a five-point veteran's preference based on his service in the Marine Corps. According to 5 CFR 333.202, the veteran's score and his eligibility for five additional preference points should have placed him at the top of the referral certificate. If CPSC had then chosen to pass over the veteran and select someone else on the referral certificate, according to 5 CFR 333.203(b), CPSC would have had to record its reasons for passing over the veteran and furnish a copy of those reasons to the veteran or his representative on request.

CPSC published two vacancy announcements, one showed a closing date of May 20, 1994. The second announcement showed a closing date of May 27, 1994. According to the OPM Federal Job Opportunities listing the correct closing date was May 27, 1994. However, the rating process occurred on May 25, two days before the closing date.

OPM FINDING

CPSC notified the Office of Personnel Management about Job Announcement Number and posted it on the Federal Job Opportunities List. According to the listing the announcement opened on May 6, 1994, and closed on May 27, 1994. The CPSC files contain another vacancy announcement also numbered with the same opening date but with a the closing date of May 20, 1994.

A review of the records indicate that the personnel officer rated the applications on May 25, 1994. A note to the files indicates that because of the "...increasing need within the agency for a writer to formulate...speeches ...in dealing with the media...the announcement is posted for 10 workdays rather than the prescribed 15 workdays due to the critical need..." It further notes that because of

Appendix II
March 3, 1997, Response From the Director,
Office of Personnel Management, to GAO'S
Referral Letter

the temporary nature of the position a rating official will evaluate the applications. CPSC's former personnel officer served as the rating official. Several staff members suggested that the former personnel officer placed this note in the file.

GAO and OPM both found a second summary rating sheet where applications were received after May 25, 1994, the date on which the personnel officer rated the first group of applicants. Because there was no crediting plan we were unable to reconstruct the ratings. All of the applicants on the second summary sheet received ratings below the cut off score for the May 25, 1994 rating.

A review of the applications suggest that the rating process was not completed in accordance with OPM requirements and CPSC policies. Contrary to CPSC instructions, no crediting plan was developed as a guide for rating applicants. Discussions with a member of the personnel staff confirmed that as a practice CPSC always develops crediting plans when filling vacancies. We were unable to determine why a crediting plan was not developed for this vacancy.

Absent a crediting plan to refer to, we were unable to reconstruct the ratings. However, we did determine that based on material in the file, we determined that the rating official did not use the same criteria consistently to evaluate the applicants qualifications. The rating official also failed to award five points veterans preference to one applicant's converted score as required by 5 CFR 333.103. In accordance with OPM regulation 5 CFR 333.202 agencies must enter the names of all applicants in order of their augmented ratings. Applicants eligible for five-point veterans preference must be listed ahead of those not eligible for preference. Since the veteran did not receive the five point veterans preference, he was not listed ahead of other applicants at what would have been his augmented score but rather was listed last with an augmented score. By not granting veterans preference eligibility to CPSC passed over a veteran when it selected a non preference eligible.

Also, CPSC omitted the final step in the shared case examining process by not forwarding the applications to OPM for processing and certification.

CONCLUSION

was erroneously appointed to the position because a veteran, was incorrectly not given five point preference and was passed over.

resigned from CPSC on November 30, 1996.)

REQUIRED ACTION

The OPM Washington Service Center has determined that may be credited with service performed under the erroneous term appointment as a *de facto* employee and

Appendix II
March 3, 1997, Response From the Director,
Office of Personnel Management, to GAO'S
Referral Letter

communicated this to CPSC in a letter dated February 10, 1997. To correctly document the creditable service for this period of erroneous employment, CPSC must process a Standard Form (SF) 50, Notification of Personnel Action, to cancel the term appointment given to (May 31, 1994 NTE May 31, 1996) following the procedures found in The Guide to Processing Personnel Actions.) A corrected SF 50 must be issued to reflect the canceled term appointment. CPSC must retain the cancellation action, along with those action canceled, in Official Personnel Folder (OPF) so that appropriate service credit can be documented.

A copy of the February 10, 1997 letter should be retained in the OPF, filed on the right-hand side as a long term document. CPSC must submit a copy of the cancellation and correction SF-50 to the Office of Personnel Management within 60 days of receipt of this report.

CPSC passed over a veteran preference candidate. In accordance with OPM rules, appointing officials may not pass over a preference eligible to select a lower ranking non-preference eligible, unless he or she submits reasons to the examining office that are sufficient to warrant the passover. Eligibles who lose an opportunity for certification or consideration must be given priority consideration for future vacancies until they are either selected or receive priority consideration for the position equal to the vacancy for which they were denied consideration.

Therefore, CPSC must first verify whether _____ is eligible for veterans preference. If he is, CPSC must notify him that he will receive priority consideration for the next available similar position filled using a two-year term appointment in the Office of Information and Public Affairs. CPSC must report the results of these actions to the Office of Personnel Management within 60 days of receipt of this report.

Appendix II
March 3, 1997, Response From the Director,
Office of Personnel Management, to GAO'S
Referral Letter

Case No. 4

Office of the Executive Director
Office of Information and Public Affairs

GAO FINDINGS

Problems: Conversion date of Ramspeck Act appointment beyond one year
Questionable appointment at GS-1035-14 step 7
Questionable term appointment

Before [redacted] current career appointment as [redacted] he had been appointed to the same job under a two year term appointment. The two-year term appointment was made based on [redacted] eligibility under Ramspeck Act authority. The following year, [redacted] was converted from the term appointment to a career appointment, again based on his eligibility under Ramspeck Act authority. However, GAO is uncertain whether or not his conversion to a career appointment on the one year anniversary of his separation from the legislative branch complies with the requirements of the Ramspeck Act.

When [redacted] obtained his two-year term appointment at CPSC, according to the SF 50-B in his official personnel folder, he was appointed at step 7 of a GS-14 based on his superior qualifications. OPM regulation 5 CFR 531.203(b) addresses superior qualifications appointments. It requires that an agency establish documentation sufficient to allow reconstruction of the action taken in each case and specifies the documentation that must be included. CPSC personnel officials could not provide us with the documentation that would support the superior qualifications appointment.

According to 5 CFR 316.301, which addresses the purpose and duration of term appointments, an agency may make a term appointment when the need for an employee's services is not permanent. The SF 50-B in [redacted] official personnel folder, indicates that the reason for the term appointment was to provide expertise to the office on special projects. However, the selecting official-- [redacted] --told us that she was unaware that special projects were used to justify the term appointment and that she was unaware of any special projects in her office. GAO determined that the [redacted] position previously had been a permanent position and had been changed to a term position before again becoming a permanent position. GAO asked the selecting official why a [redacted] job would be classified as a term position. According to her, she was advised by CPSC personnel officials that making the

Appendix II
March 3, 1997, Response From the Director,
Office of Personnel Management, to GAO'S
Referral Letter

job a term position would be a good way of trying out the individual selected for the position. Then, if the individual performed well, the position could be made permanent.

Since there were no special projects to justify the term position and given the permanency of the position as evidenced by (1) the job having previously been classified as a permanent position and (2) conversion-in-place from a term appointment to a career appointment, GAO questions whether the use of a term appointment was appropriate. GAO is uncertain whether career appointment complied with the requirements of the Ramspeck Act.

OPM FINDING

We do not consider the use of a term appointment to fill this position inappropriate. Based on information CPSC provided, the position was vacant because the [redacted] was reassigned to handle the agency's hotline in the Office of Information Services. The Chairman of the agency planned to have the Office of Information and Public Affairs (OIPA) increase its efforts to raise the agency's profile and to reach out to the consumers. At the same time, the CPSC's future funding level was questionable and the Director of OIPA was unsure whether she would be able to fully staff the office in the future. OPM regulation 5 CFR 316.301 authorizes agencies to make term appointments when there future funding is uncertain. OPM regulation 5 CFR 316.304 states that the first year of a term appointment is a trial period. Therefore, CPSC could have used [redacted] first year as a trial period in accordance with this regulation.

In accordance with 5 U.S.C. 3304, an individual who served for at least three years in the legislative branch acquires a competitive status for transfer to the competitive service if he or she is involuntarily separated and transfers to the competitive service. Based on [redacted] Official Personnel File, he was eligible for a Ramspeck appointment when he was appointed the [redacted] on January 4, 1995. CPSC used appropriate OPM regulation 5 CFR 316.302 (c)(6) to authorize the action.

Although we see no impropriety in CPSC's appointment of [redacted] under the superior qualifications appointment, CPSC was unable to locate the documentation required by 5 CFR 531.203 (b)(4) require agencies to establish. The regulations direct agencies to establish documentation and record keeping procedures sufficient to allow reconstruction of the superior qualifications determination or the special needs of the agency that justify use of the authority. CPSC is not in compliance with these regulations.

Based on the documentation available, we see nothing improper about the pay rate received by [redacted] upon his appointment to CPSC from a legislative branch position in January 1995. OPM's regulation on the use of an employee's "highest previous rate" (5 CFR 531.203(c)) and the definition of "highest previous rate" (5 CFR 531.202) clearly permit the use of a rate of pay earned in a legislative branch position as the basis for setting pay upon appointment to an executive branch position covered by the General Schedule. The only requirement is that the rate of pay used as the basis for setting pay must have been earned while serving under an appointment not limited to 90

Appendix II
March 3, 1997, Response From the Director,
Office of Personnel Management, to GAO'S
Referral Letter

days or less or for a continuous period of not less than 90 days under one or more appointments without a break in service (5 CFR 531.203(d)). received a rate of pay of \$89,500 in his legislative branch position from August 1994 until November 1994, and there is no indication that the appointment under which he served was limited to 90 days or less.

As specified by 5 U.S.C. 3304, individuals with Ramspeck eligibility lose the benefit one year after their separation from the legislative branch of the Government. A review of personnel records reflects that at the time CPSC converted his term appointment to a career appointment his Ramspeck eligibility had not expired. Ramspeck eligibility begins the day following the last day of legislative employment. Therefore, in case the last day of employment was January 3, 1995 and his Ramspeck eligibility began on January 4, 1995 and continued through January 3, 1996.

CONCLUSION

CPSC appointed to a term position according to OPM regulation 5 CFR (316.302(b)(6)). This regulation authorizes agencies to make term appointments without the existence of an appropriate register to a person with Ramspeck eligibility (5 U.S.C. 3304(c)). CPSC was also correct when it converted term appointment as was eligible for a Ramspeck conversion to career on January 3, 1996. The action occurred within one year of his separation from the legislative branch of the Government. In addition, the rate of basic pay previously received as an employee in the legislative branch of the Federal Government may be used when determining the highest previous rate. Regulation (5 CFR 531.202) clearly delegates CPSC the authority to establish salary on the basis of his highest previous rate.

We were unable to determine why CPSC cited in the remarks section of the Notification of Personnel Action that appointment was based on superior qualifications, when in fact, CPSC appointed using a term appointment authority and his salary was based on highest previous rate.

CPSC processed Ramspeck conversion to a career appointment within the authority delegated to them.

REQUIRED ACTION

The Standard Form (SF) 50, Notification of Personnel Action, for the term appointment that was effective January 4, 1995 must be corrected to remove the remark, "Superior Qualifications appointment made under Regulation 531.203(b). All other remarks are to remain on the appointment document.

Appendix II
March 3, 1997, Response From the Director,
Office of Personnel Management, to GAO'S
Referral Letter

Case No. 5

Office of the Executive Director
Office of Information and Public Affairs

GAO FINDINGS

Problems: No documentation to justify superior qualifications
 Questionable appointment at GS-1035-11 step 2
 Questionable term appointment

According to the Notification for Personnel Action (SF 50-B), [redacted] was appointed at step 2 of a GS-11 based on superior qualifications. Section 531.203(b) of title 5, Code of Federal Regulations addresses superior qualifications appointments and requires that an agency establish documentation sufficient to allow reconstruction of the action taken in each case and specifies the documentation that must be included. CPSC personnel officials could not provide us with the documentation required by regulation that would support the superior qualifications appointment. Also, according to 5 CFR 316.301, which addresses the purpose and duration of term appointments, an agency may make a term appointment when the need for an employee's services is not permanent, such as when there is a need for special projects. According to the SF 50-B in [redacted] official personnel folder, the reason for the term appointment was to provide expertise to the office on special projects. However, [redacted] personnel records do not identify what projects she was assigned.

OPM FINDING

We do not consider the use of a term appointment to fill this position inappropriate. Based on information CPSC provided us, the Chairman of the agency planned to have the Office of Information and Public Affairs (OIPA) increase its efforts to raise the agency's profile and to reach out to the consumers. This required additional staff support. At the same time, the CPSC's future funding level was questionable and the Director of OIPA was unsure whether she would be able to fully staff the office in the future. OPM regulation (5 CFR 316.301) authorizes agencies to make term appointments when there is uncertainty of future funding.

[redacted] received a superior qualifications appointment as a Public Affairs Specialist, GS 1035-11 step 2. CPSC processed this appointment correctly under the shared case examining procedures and name requested [redacted] OPM provided a list of eligibles to [redacted]

Appendix II
March 3, 1997, Response From the Director,
Office of Personnel Management, to GAO'S
Referral Letter

CPSC. _____ and a nonpreference candidate were listed; _____ name appeared at the top of the list.

Before her appointment by CPSC on January 4, 1995, _____ was employed by the _____
A review of _____ credentials reflect that _____
_____ was well-qualified for the position. She had a wide range of experiences in the Public relations area sufficient to receive a superior qualifications appointment at the GS-11 grade level. However, CPSC did not document their rationale for approving the advance-in-grade pay rate on the basis of her superior qualifications.

Although she met the qualifications for the position and was certified by OPM, there is not sufficient documentation in her file to support CPSC's determination that she has unique qualifications. CPSC used a pay stub dated December 22, 1994, to verify her salary. The data shows that on that date, _____ salary was \$30,822. CPSC set _____ salary rate at \$36,214 (\$34,744 + \$1,470 for locality pay).

CONCLUSION

CPSC used its authority under 5 CFR 531.203 to determine at what level the employee's pay should be set when making superior qualifications appointments. However, CPSC did not adequately document, as required by 5 CFR 531.203 (b)(4), _____ superior qualifications or the reasons for setting her pay at a higher rate.

_____ resigned from CPSC on September 27, 1996.)

REQUIRED ACTION

CPSC must fully document _____ superior qualifications for the position and justify the advanced rate of pay and submit the documentation to the Office of Personnel Management within 60 days of receipt of this report.

Appendix II
March 3, 1997, Response From the Director,
Office of Personnel Management, to GAO'S
Referral Letter

Case No. 6

Office of the Executive Director
Office of Information and Public Affairs

GAO FINDINGS

Problems: Veteran Passover and Improper Panel Procedure

obtained a temporary appointment effective December 4, 1995. According to a CPSC summary rating sheet, 11 people were rated for the position and 4 of them were certified with scores of 70 or higher, including [redacted]. Her score was the third highest of the four. A resulting certificate of eligibles was not in the file, but the summary rating sheet shows that the panel members agreed to certify those candidates with a score of 70 or above. The highest scoring candidate was a veteran who claimed a five point veteran's preference. According to 5 CFR 333.202, based on the veteran's score and his eligibility for five additional preference points, it appears that the veteran would have been placed at the top of the referral certificate. If CPSC then chose to pass over the veteran and select someone else on the referral certificate, according to 5 CFR 333.203(b), CPSC would have had to record its reasons for passing over the veteran and furnish a copy of those reasons to the veteran or his representative on request.

According to CPSC's General Counsel, in this case, following the scoring results, the former CPSC Personnel Director asked the panel members to re-score the applicants and take into account "recency of experience." OPM officials told us that at the time of the rating process "recency of experience" was not a factor to be considered. They said that "recency of experience" did not become a factor of consideration until early 1996. According to CPSC's General Counsel, two of the three panel members agreed to re-score the applicants taking into account "recency of experience" but the third panel member refused to do so. The results of the re-scoring and a resulting certificate of eligibles were not in the file but according to CPSC's General Counsel, [redacted] scored higher than the veteran following the re-scoring and she was selected and appointed to the position. Also according to CPSC's General Counsel, later, in an effort to validate the rating (scoring) and selection process, a new panel was established to rate and rank the applicants. Again, [redacted] scored higher than the veteran. We found a CPSC summary rating sheet and certificate of eligibles that resulted from the new panel's efforts. The certificate of eligibles showed that [redacted] was selected for the position. However, both the summary rating sheet and the certificate of eligibles are dated 2 days after [redacted] had been appointed to the position.

**Appendix II
March 3, 1997, Response From the Director,
Office of Personnel Management, to GAO'S
Referral Letter**

OPM FINDING

Based on the case file for this recruitment action, eleven applicants applied for this position. The former personnel officer convened a panel to rate and rank the applicants. The panel rated a five point veteran higher than any other applicant. The panel agreed to certify candidates with scores of 70 and above. Four applicants received qualifying scores. However, the former personnel officer reconvened the panel, reportedly to raise score. The panel consisted of three CPSC employees. When asked to re-evaluate the applicants qualifications, one of the panel members refused. The other panelists agreed to re-evaluate the qualifications using recency of experience as a rating factor. The documentation does not clearly reflect the outcome of this activity.

The panelist who refused to change the scores complained to the CPSC General Counsel. In turn, the CPSC General Counsel directed the Chief of Personnel Operations to convene a new panel to evaluate the applicants, because of the manner in which the panel was conducted. The former personnel officer was not involved in the new panel, and it was not told that there had been another panel. This panel agreed to certify applicants with scores of 80 and above. scored 85 and scored 75, including five points for veterans preference. As a result, he was not listed on the certificate. A review of his qualifications indicates that he was qualified for the position, although he last served as a Public Affairs Officer in the military from 1989 to 1991. The former personnel officer was reprimanded by CPSC because of her handling of the first panel.

CONCLUSION

Because of the allegations surrounding the Former personnel officer's mishandling of the first panel which were substantiated by the reprimand that she received, we turned our attention to the first panel.

It is our opinion that had the results of the first panel not been tampered with by the former personnel officer, would have been at the top of the list of eligibles referred to the selecting official. By interfering with the rating process, the former personnel officer caused to be passed over.

appointment expired on December 3, 1996.)

REQUIRED ACTION

CPSC passed over a veterans preference candidate. In accordance with OPM rules, appointing officials may not pass over a preference eligible to select a lower ranking nonpreference eligible, unless he or she submits reasons to the examining office that are sufficient to warrant the passover. Eligibles who lose an opportunity for certification or consideration must be given priority consideration for future vacancies until they are either selected or receive priority consideration for a position equal to the vacancy for which they were denied consideration.

Appendix II
March 3, 1997, Response From the Director,
Office of Personnel Management, to GAO'S
Referral Letter

CPSC must first verify that [redacted] qualifies for veterans preference. If he does, CPSC must notify him that he will receive priority consideration for the next available similar temporary position in the Office of Information and Public Affairs. CPSC must report the results of these actions to the Office of Personnel Management within 60 days of receipt of this report.

In regards to [redacted] appointment on December 4, 1995, CPSC clearly appointed her before she was officially selected for the position on December 6, 1995. Nevertheless, [redacted] appointment actually began the date the SF-52 was approved. However, since the SF-52 was not signed, the effective date of her appointment should be on December 9, 1995, the next work day after the Chief, Operations Branch signed the SF-50. [redacted] service under the improper appointment is considered to be *de facto* employment. [redacted] is entitled to retain compensation for her *de facto* service from December 4, 1995, to the date of her correct appointment date. The Comptroller General has determined that employees may retain the pay and benefits earned during the *de facto* employment, as long as their improper service did not violate any absolute statutory bar and did not result from fraud or misrepresentation. Therefore, [redacted] service during that period (December 4, 1995 - December 8, 1995) is creditable for most purposes including leave accrual, retirement, service computation date, and eligibility for within-grade increases. Since credit for career tenure and time-in-grade purposes must be earned under proper appointment, her *de facto* service for the four day period (December 4-7, 1995) is not credited for those purposes.

As in the case of [redacted] CPSC cancel [redacted] initial appointment (December 4, 1995) and issue a replacement SF-50 effective December 9, 1995. CPSC must also ask OPM to recognize her as a *de facto* employee during this time period and submit a copy of the replacement SF-50 to the Office of Personnel Management within 60 days of receipt of this report.

Comments From the U.S. Consumer Product Safety Commission



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

June 17, 1997

Mr. Michael Brostek
Associate Director, Federal Management and Workforce Issues
U.S. General Accounting Office

Washington, DC 20548

Re: Draft Report to Chairman Mica Regarding
Certain Past CPSC Personnel Actions

Dear Mr. Brostek:

This letter sets forth the comments of the staff of the Consumer Product Safety Commission ("CPSC") on the draft General Accounting Office ("GAO") report regarding certain personnel matters at the CPSC, dated June, 1997 (the "Report").

Although we differ with some of the wording of the Report and its appendices, we agree that during the period in question certain errors in our personnel processing occurred. We regret those errors and have identified areas for improvement. The Report properly acknowledges some of the new CPSC procedures that will help us avoid future errors.

GAO's finding that there has been no "burrowing" of political appointees at CPSC is a very significant feature of the Report. Allegations of "burrowing" were the impetus for GAO's investigation, but GAO found no evidence to substantiate these serious allegations. During the tenure of Chairman Ann Brown, CPSC has never engaged in the "burrowing" of political appointees or the displacement of career employees with political appointees.


We further must emphasize that the persons responsible for personnel matters at the time of the problems GAO identified no longer work at CPSC. In December 1995, I became Executive Director. In April 1996, CPSC hired a new Director of Human Resources. GAO has identified no problems occurring since these appointments.

**Appendix III
Comments From the U.S. Consumer Product
Safety Commission**

Most importantly, we have worked closely with both GAO and the Office of Personnel Management ("OPM") to implement necessary corrective actions. We have paid OPM to audit our personnel files and have responded to its findings, as the Report points out. Under contract with CPSC, OPM will return for an audit of our activities under our delegated authority later this month. We are confident that OPM will find we have been properly exercising our delegated authority.

We appreciate the opportunity to provide these comments on the Report. If the CPSC staff can be of any further assistance, please contact me.

Sincerely,


Pamela Gilbert
Executive Director

cc: Hon. Dan Burton
Hon. Henry A. Waxman
Hon. John L. Mica
Hon. Elijah E. Cummings
Sen. Fred Thompson
Sen. John Glenn

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