

**DECISION**

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

FILE: B-185482

DATE:

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MATTER OF: Katherine M. Kline - Retroactive Promotion

**DIGEST:** Employee accepted lateral reassignment to new position with agency promise that position held two-grade interval promotion from grade GS-5 to GS-7. However, position had one-grade interval promotion pattern from grade GS-5 to GS-6 to GS-7. Agency may not grant employee retroactive promotion with backpay to dates she should have been promoted since classification actions generally have only prospective effect. Further, there is no evidence of intentional misclassification due to discrimination.

This action is in response to a request for an advance decision from the Environmental Protection Agency (EPA) concerning whether the agency may grant a retroactive promotion and backpay to an employee, Ms. Katherine M. Kline, under the provisions of 5 U.S.C. § 5596 (1970).

The record shows that Ms. Kline, who was employed at EPA's Region V office in Chicago, accepted a lateral reassignment on June 24, 1973, from the position of Secretary, grade GS-5, to the position of Program Assistant (later designated as Enforcement Assistant), grade GS-5. The agency states that this reassignment was accepted by the employee with the express understanding that the new position held a "double-grade one-time promotion potential" to grade GS-7. However, that representation by EPA was erroneous. The record indicates that from January until April 1974, Ms. Kline's supervisor worked with EPA's Personnel Office to prepare a position description for Ms. Kline's promotion to grade GS-7, but, in April 1974, an EPA Regional Classifier determined that her position, Program Assistant, GS-301-5, was a position with a one-grade rather than a two-grade interval for promotions. It appears from the record that the Classifier also determined that Ms. Kline's position had been erroneously classified as a 301 series position rather than a 344 series position. EPA then offered the employee a "compromise" of a promotion to grade GS-6 in the 344 series position under merit promotion procedures.

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Ms. Kline refused the offer of a "compromise" and appealed the classification decision. In addition, at her request the Civil Service Commission investigated the matter, and by letter dated June 26, 1974, the Commission expressed regret that the employee was "caught in the middle" while EPA established stronger classification procedures. In January 1975, EPA determined that Ms. Kline's position, Enforcement Assistant, grade GS-5, had a one-grade interval promotion potential to grade GS-7, and Ms. Kline did not appeal further. In March 1975, Ms. Kline was promoted to grade GS-6.

The agency argues that had the Regional Administrator for Region V been advised of the problems discussed above as of January 1974, " \* \* \* he would have seen to it that a GS-6 position was established \* \* \* " at that time, Ms. Kline would have then been promoted to grade GS-6, and she would have been eligible for promotion to grade GS-7 in January 1975. EPA contends that the failure to promote Ms. Kline as originally intended violated both EPA's promise that the position held a two-grade interval promotion potential and the Affirmative Action Plan of EPA Region V providing for upward mobility for qualified minorities and women. The agency questions whether its actions constitute an unjustified or unwarranted personnel action under the Back Pay Act, 5 U.S.C. § 5596 (1970), which would entitle the employee to a promotion to grade GS-6 and backpay retroactive to January 1974, and to a promotion to grade GS-7 and backpay retroactive to January 1975.

Our decisions have generally held that personnel actions, including promotions, cannot be made retroactively effective unless clerical or administrative errors occurred that (1) prevented a personnel action from taking effect as originally intended, (2) deprived an employee of a right granted by statute or regulation, or (3) would result in failure to carry out a nondiscretionary administrative regulation or policy if not adjusted retroactively. See 55 Comp. Gen. 42 (1975) and cases cited therein. We have also recognized that the above-stated exceptions may constitute an unjustified or unwarranted personnel action under the provisions of the Back Pay Act, 5 U.S.C. § 5596 (1970). However, the case before us involves the classification of positions which is basically a matter within the jurisdiction of the employing agency and the Civil Service Commission. See 5 U.S.C. § 5107 (1970).

When a position is classified in accordance with regulations, an employee may not be promoted retroactively, even though the agency may subsequently reconsider its classification determination and reclassify the position upwards. See B-184646, February 20, 1976, and cases cited therein. Under Civil Service Commission regulations contained in 5 C.F.R. Part 511, Subpart F, an employee may appeal his position classification, and we note that Ms. Kline filed such an appeal in April 1974. However, in January 1975, EPA classified her position as Enforcement Assistant, GS-301-5, with a one-grade interval promotion potential to grade GS-7, and Ms. Kline did not appeal further. Civil Service Commission regulations further provide that the effective date of a classification action taken by an agency or resulting from an employee's appeal is the date the action is approved or the appeal is decided or a date subsequent to that date. See 5 C.F.R. Part 511, Subpart G; 55 Comp. Gen. 515 (1975). Absent any indication that Ms. Kline's position was intentionally misclassified, there is no authority to allow a retroactive promotion with backpay. 50 Comp. Gen. 581 (1971).

In the present case, it appears that EPA was in error in designating Ms. Kline's position as subject to a two-grade interval promotion. Federal Personnel Manual Chapter 300, Appendix A, provides that the series GS-301 positions are "exceptions" which may be classified at two-grade intervals only with the prior approval of the Civil Service Commission, and there is nothing in the record indicating that EPA had obtained prior approval. Thus, while the agency may have misled the employee with regard to the promotion potential of the position, this does not afford a basis for a retroactive promotion in view of the prospective-only nature of classification actions. Further, it does not appear that EPA's Affirmative Action Plan affords a basis for granting backpay since there is no evidence of discrimination on the basis of race or sex which led to an intentional misclassification of Ms. Kline's position. See 50 Comp. Gen. 581, supra.

Accordingly, the agency may not grant the employee a retroactive promotion with backpay under the provisions of 5 U.S.C. 5596 (1970).

R.F. KELLER

[Deputy] Comptroller General  
of the United States