

DECISION



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

FILE: B-214203 **DATE:** September 12, 1985
MATTER OF: Agnes Mansell - Retroactive Promotion
and Backpay

DIGEST:

An employee was selected from a selection register for promotion and was orally so notified. She reported to her new position, but was not actually promoted until 1 month later due to administrative delays in processing the necessary paperwork. The claim for retroactive promotion and backpay is denied. In the absence of a nondiscretionary agency regulation or policy, the effective date of a promotion may not be earlier than the date action is taken by an official authorized to approve or disapprove the promotion. The delays here all occurred before the authorized official had the opportunity to act. Further, the failure to promote the employee at an earlier date did not violate a nondiscretionary agency policy.

This decision is in response to a request from the Civilian Personnel Officer, Fort Ord, California, Department of the Army, concerning the entitlement of one of its employees to receive a retroactive promotion and backpay. This matter was submitted under procedures for handling labor-management relation matters. See 4 C.F.R. Part 22 (1985). We conclude that the employee is not so entitled for the following reasons.

BACKGROUND

The employee, Ms. Agnes Mansell, a clerk-stenographer, grade GS-4, was selected for promotion to secretary, grade GS-5, within the U.S. Army MEDDAC unit at Fort Ord, California. Her selection from the register was approved by the designated selecting official on October 13, 1983, and she was orally notified by a Civilian Personnel Office (CPO) representative on the same date. Ms. Mansell was thereafter informed by her supervisor that she should report to her new position on October 31, 1983. She did so, but as of that date she had not received any formal, written notification of her promotion.

On November 21, 1983, upon receiving her first paycheck while in her new position, Ms. Mansell discovered that it failed to reflect her expected pay increase. She immediately brought the matter to the attention of the CPO staffing specialist who handled the matter. She was informed that due to understaffing in the office, the staffing specialist had been unable to complete the necessary paperwork so that her promotion could be effected. According to the submission, if there had been no processing delay on the part of the staffing specialist, the approving official would have effected the promotion as originally intended, i.e., on October 30, 1983. After the staffing specialist completed all the necessary paperwork, it was sent to the authorized approving official for signature. That official, Mr. Bruce Dillingham, Chief, Technical Services Office, was the only person who had been delegated the authority to approve or disapprove promotion actions. Upon receipt of the necessary forms in Ms. Mansell's case on November 23, 1983, he exercised his delegated authority and approved her promotion, effective November 27, 1983.

The claim being made by Ms. Mansell is for the difference between her pay as a grade GS-4, step 1, and as a grade GS-5, step 1, for the period October 30, 1983, to November 26, 1983.

DECISION

An employee of the Federal government is entitled only to the salary of his or her appointed position regardless of the duties actually performed. Dianish v. United States, 183 Ct. Cl. 702 (1968); Thomas Davis, B-189673, February 23, 1978. Also, the granting of promotions is a discretionary matter primarily within the province of the administrative agency concerned. 54 Comp. Gen. 263 (1974). The effective date of a change in salary resulting from a promotion is the date action is taken by the administrative officer vested with promotion approval authority, or a subsequent date specifically fixed by him. 21 Comp. Gen. 95 (1941). However, backpay may be awarded under the authority of 5 U.S.C. § 5596 (1982) as a remedy where unjustified and unwarranted personnel actions affecting pay or allowances have been taken.

Our decisions have held that, as a general rule, a personnel action may not be made retroactive so as to

increase the rights of an employee to compensation. We have made exceptions to this rule where administrative or clerical error (1) prevented an approved personnel action from being effected as originally intended, (2) violated nondiscretionary administrative regulations or policies, or (3) deprived the employee of a right granted by statute or regulation. See Douglas C. Butler, 58 Comp. Gen. 51 (1978), and decisions cited therein.

As we stated in Butler with respect to delays or omissions in the processing of promotion requests which would permit a promotion to become effective on an earlier date, our decisions have drawn a distinction between errors that occur prior to promotion approval by the properly authorized official and errors that occur after such approval, but before the acts necessary to effect promotions have been fully carried out. Thus, where the delay or omission occurs before that authorized official has exercised his discretionary authority with respect to approval or disapproval of the promotion, administrative intent to promote at a particular time other than the date of the approval cannot be established. On the other hand, if, after the authorized official has exercised his discretionary authority and approved the promotion request, all that remains to effect that promotion is a series of ministerial acts which could be compelled by a writ of mandamus, any administrative or clerical errors which delay or prevent a promotion from occurring after such approval, do come within the exceptions outlined above so as to permit a retroactive promotion. John Cahill, 58 Comp. Gen. 59 (1978); Janice Levy, B-190408, December 21, 1977.

In our decision, Esther Prosser, B-194989, August 8, 1979, we considered a claim for a retroactive promotion where the administrative delay occurred before the promotion request documents were forwarded to the authorized official for approval. Citing to our analysis in Butler, we concluded that the delay in processing the claimant's promotion prior to final approval did not constitute administrative error so as to permit a retroactive promotion, since there was no nondiscretionary regulation or policy otherwise requiring the promotion.

It has been suggested in the submission that, while there are no local merit promotion regulations or a labor

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agreement establishing when promotions are to become effective, there is a local regulation and general practice which when considered in combination may qualify as the requisite nondiscretionary policy. The local regulation provides, generally, that employees selected for promotion, detail, or reassignment are to be released from their old positions to report to their new positions no later than the beginning of the second pay period after the CPO representative has officially notified the employee of selection. Additionally, it is asserted that it is the general practice at Fort Ord to use the release date as the effective date on the SF-50 Notification of Personnel Action.

We do not consider the local regulation and general practice as establishing a nondiscretionary policy. As noted, promotions may not intentionally be made retroactive (Butler, above). By using the release date as the effective date for employee promotion purposes, it would appear to suggest that the action by the selecting official constitutes the true determiner of the validity of a promotion and its effective date, since all actions (release/effective date) occur thereafter. However, it is stated unequivocally that the Chief, Technical Services Office, not the selecting official, is the only person within the CPO vested with the discretionary authority to approve or disapprove all promotions. Therefore, any delays which antedate such discretionary action are not administrative errors which qualify under the exceptions stated in Butler, above.

Also, it appears that the purpose of the regulation is to provide a reasonable lead time to complete the necessary paperwork and grant the authorized official the opportunity to exercise his discretionary authority to approve promotions before the employee is released, thereby permitting the release date to be used as the effective date for SF-50 purposes. However, if, as in this case, such final action cannot be accomplished within that time, the release date may not be used as the effective date for promotion and pay purposes. Until an official vested with discretionary authority acts, a promotion has not occurred. See Prosser, above.

Accordingly, Ms. Mansell's claim for a retroactive promotion with backpay is denied.



Acting Comptroller General
of the United States