

**DECISION**



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

FILE: B-184817

DATE: NOV 28 1975

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MATTER OF: **Joseph Aloï - Retroactive promotion**

**DIGEST:**

Where promotion of eligible employee may have been delayed for short period of time because employee was voluntarily transferred to new permanent duty station necessitating reprocessing of promotion, promotion is not delayed due to administrative or clerical error, and is not exception to general rule forbidding retroactive promotions of Government employees.

This case arises on an appeal of Mr. Joseph Aloï from a settlement certificate of our Transportation and Claims Division Z-2576112, dated July 23, 1975 disallowing his claim for retroactive promotion and back pay for the period of July 21, 1974, to October 31, 1974. The record shows that Mr. Aloï was employed by the United States Customs Service as an Import Specialist, grade GS-7, in Customs Region VII, Los Angeles, California. He became eligible for promotion to grade GS-9 on July 21, 1974. His promotion to that grade was effected on October 31, 1974.

Further, the record indicates that Mr. Aloï's supervisor in Region VII (Los Angeles) initiated a Request for Personnel Action (SF-52) on September 16, 1974, requesting promotion to grade GS-9. Mr. Aloï claims that this action was initiated by his telephonic request to the California office and was thus commenced through the California Region by him, notwithstanding that he had previously been voluntarily reassigned to Customs Region II, New York, effective September 1, 1974. It appears that when Mr. Aloï's SF-52 reached the personnel office in Los Angeles, on September 16, 1974, that office determined that Mr. Aloï was no longer assigned to Region VII. Mr. Aloï's promotion was reprocessed through Region II, and effected in due course on October 31, 1974.

Mr. Aloï is apparently of the view that his promotion should have been effected automatically, but that it was delayed by unspecified "unquestionable and inexcusable negligence" of the District Director of Customs in Los Angeles, which Mr. Aloï contends is evidenced by the statements of two officials of Region VII, whom he claims stated that they would prepare and submit a back-dated SF-52. The Customs Service asserts that promotion is discretionary, and that no written administrative policy or regulations assured Mr. Aloï of automatic promotion on July 21, 1974.

It is well established that the power of appointment to or promotion within civilian Government service is an executive function and lies within the discretion of the employing agency. See 5 C.F.R. § 335.102, 103 (1975); Federal Personnel Manual (FPM) ch. 335; FPM Supp. 335-1. Tierney v. United States, 168 Ct. Cl. 77, 80-81 (1964), and cases cited therein.

Generally, a personnel action may not be made retroactively effective so as to increase an employee's right to compensation. 52 Comp. Gen. 920 (1973); 39 Comp. Gen. 583 (1960); 26 Comp. Gen. 706 (1947). Even where employees are successful in persuading the Civil Service Commission that they are entitled to promotion or reclassification of their position to a higher grade their entitlement to pay at the higher grade commences only when their promotions are actually effected. Dianish v. United States, 183 Ct. Cl. 702 (1968). Exceptions to this rule have been permitted only where (1) through administrative or clerical error a personnel action was not effected as intended, (2) where the administrative error has deprived an employee of a right granted by statute or regulation, or (3) where nondiscretionary administrative regulations or policies were not carried out. 54 Comp. Gen. 69 (1974), and cases cited therein.

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We are directed to no administrative regulation or policy which required Mr. Aloi's promotion, nor to statutory or regulatory right of which he was deprived. The thrust of Mr. Aloi's position is founded on administrative or clerical error, but he has not demonstrated any error except by his contention that the promotion was to have been made retroactive -- a contention joined with the admitted fact that he initiated the processing of his SF-52 through an office to which he was no longer assigned. Doubtless, that he was voluntarily transferred complicated the regular processing of his promotion.

However, complication of the administrative process -- e.g., by an employee's coincidental voluntary reassignment -- does not demonstrate administrative or clerical error within the exception. Unavoidable delay or delay occasioned by the employee's own act is not an exception to the general rule forbidding retroactive promotions of Government employees.

Accordingly, the decision of our Transportation and Claims Division, disallowing Mr. Aloi's claim, is sustained.

Paul S. Deebing

Acting Comptroller General  
of the United States