

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

61173 JUL 21 1976

FILE: B-185312

DATE: JUL 21 1976

MATTER OF:

Harold P. Sipperly - Retroactive promotion -
Backpay

97891

DIGEST:

Employee's position was regraded from GS-12 to 13 incident to an agency position classification audit. Agency must promote qualified employee within a reasonable time or remove him from the position. Here agency delayed such action for over a year before promoting the employee to the grade GS-13. Employee is entitled to retroactive promotion.

Ms. Orris C. Huet, an authorized certifying officer, United States Department of Agriculture, submitted for decision the claim of Mr. Harold P. Sipperly for backpay representing the difference in salary between grade GS-12, step 9, and grade GS-13, step 5, for the period May 10, 1974, to May 25, 1975.

The essential facts are not in dispute. Mr. Sipperly was employed as a Mechanical Engineer grade GS-830-12. His position was audited by the agency in March 1974 and was classified to grade GS-830-13, on May 10, 1974. Mr. Sipperly continued to occupy the position and was promoted to the grade GS-13 level on May 25, 1975. The agency regulations, Department of Agriculture Personnel Manual, DPM 277, 2-2d require that when an employee is performing the duties of a position when it is reclassified, a personnel action must be taken within 30 days of the classification effective retroactive to the earliest legal date. In this case such date is indicated to be May 12, 1974, the beginning of the next pay period after the classification. The agency regulations also provide a procedure to remove the employee when he is not to be promoted to the higher grade of the position. Agency procedure was not followed. Although the record indicates some doubt by management as to employee's ability to perform fully the duties of the higher grade, there is no showing that the employee was other than fully qualified to be promoted. The agency feels that it does not have authority to make a retroactive promotion in the circumstances. For the following reasons we hold that it does.

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In 53 Comp. Gen. 216 (1973) we held that an employee had a justifiable claim for retroactive promotion and salary differential between grades GS-12 and 13 where the position he was serving in was reclassified and the administrative office failed to act timely. As pointed out in the foregoing decision, it is well established that when an agency reclassifies a position to a higher grade, it must, within a reasonable time after the date of final position classification, either promote the incumbent if he is otherwise qualified or remove him from the position--citing B-165307, November 4, 1968; 48 Comp. Gen. 258 (1968); 37 Comp. Gen. 492 (1958). Additionally, it was held in 53 Comp. Gen. 216 at 218, supra, that where an agency upgrades a position, the retention of the incumbent in that position amounts to a determination by the agency that the incumbent is in fact qualified to perform the duty of the higher grade.

With respect to what in general is a reasonable time within which to effect promotion in such cases, see 54 Comp. Gen. 216, 218, supra. In the case of Mr. Sipperly the promotion should be effective as of May 12, 1974, the beginning of the pay period after the allocation of his position to grade GS-13.

R. F. KELLER

Deputy

Comptroller General
of the United States