

Goddard  
C.P.

**DECISION**



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

04642

FILE: B-188193

DATE: January 3, 1978

MATTER OF: Harriet B. Marple - Retroactive  
Salary Increase

DIGEST: Employee of Environmental Protection Agency was hired by Administrator with understanding she would be appointed at a grade GS-15, step 7, level. On discovery that the employee had been appointed at grade GS-15, step 1, level, the Administrator requested Civil Service Commission approval of employee's appointment at the higher rate and approval was received prospectively. Employee may not receive retroactive salary increase, however, since regulation requires that appointments to positions in grade GS-11 or above at a rate above the minimum rate of the appropriate grade be made only with the prior approval of the Commission.

Mr. Alvin L. Alm, Assistant Administrator for Planning and Management, Environmental Protection Agency (EPA), requested authorization to make a retroactive salary increase in the case of Ms. Harriet B. Marple, an employee of EPA.

FACTS

Ms. Marple was initially employed by EPA on October 3, 1976, as an Attorney-Adviser, GS-905-15, step 1, and she served as the personal legal adviser to the then Administrator of EPA, Mr. Russell Train. It was the stated intention of Mr. Train, when Ms. Marple was hired, that Ms. Marple be brought on at grade GS-15, step 7, level, thus affording her the maximum permissible pay of \$39,600 per annum. Mr. Alm states in his submission, however, that through administrative error, approval for hiring Ms. Marple above the minimum rate of the grade GS-15 level was not secured from the Civil Service Commission (CSC) at the time of Ms. Marple's appointment, so she was accordingly assigned the pay of grade GS-15, step 1, \$31,309.

On November 3, 1976, after Ms. Marple received her first paycheck at grade GS-15, step 1, level, at which time it was recognized a mistake had been made, Mr. Train wrote the Chairman

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of the CSC concerning Ms. Marple's salary level and explained that " \* \* \* I offered her the position and she accepted it with the understanding that the Agency would recommend to the Civil Service Commission that she be hired at the maximum pay level - Grade 15 Step 7 or \$39,600 per year." Accordingly, Mr. Train asked for appropriate resolution of the "simple administrative snafu" which had occurred.

By letter of December 20, 1976, the Chairman of the CSC responded to Mr. Train's request for a variation under civil service rule V, permitting adjustment of Ms. Marple's salary as follows:

"Because, in view of Miss Marple's outstanding qualifications and the reasonableness of her salary requirement, a timely request for the advanced rate would have been approved, and because your hiring commitment to her was made and accepted in good faith, we have approved your request. You are hereby authorized to increase Miss Marple's salary to the seventh step of grade GS-15.

"You should be aware, however, that we cannot authorize this adjustment on a retroactive basis. Retroactive pay is a matter within the jurisdiction of the General Accounting Office rather than the Civil Service Commission, and any authorization for retroactive salary correction must come from the Comptroller General. Should you wish to request that the Comptroller General authorize retroactive pay in Miss Marple's case, you may cite our findings in your submission."

Mr. Alm has accordingly requested approval for a retroactive salary increase for Ms. Marple.

#### OPINION

As a general rule, an administrative change in salary may not be made retroactively effective in the absence of specific statutory authority to do so. 26 Comp. Gen. 706 (1947), 39 id. 583 (1960), 40 id. 207 (1960). We have, however, permitted

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retroactive adjustment of salary rates in certain cases when errors in computation occurred as a result of a failure to carry out nondiscretionary administrative regulations or policies. 34 Comp. Gen. 380 (1955) and 39 id. 550 (1960). In addition, we have permitted retroactive pay adjustments in cases where employees have been deprived of a right granted by statute or regulation. 21 Comp. Gen. 369, 376 (1941); 37 id. 300 (1957); 37 id. 744 (1958); 54 id. 69 (1974).

Section 5333 of title 5 of the United States Code states in pertinent part:

"(a) New appointments shall be made at the minimum rate of the appropriate grade. However, under regulations prescribed by the Civil Service Commission which provide for such considerations as the existing pay or unusually high or unique qualifications of the candidate, or a special need of the Government for his services, the head of an agency may appoint, with the approval of the Commission in each specific case, an individual to a position in GS-11 or above at such a rate above the minimum rate of the appropriate grade as the Commission may authorize for this purpose.\* \* \*"

The regulations prescribed by the CSC under the authority of the above-cited law are found in pertinent part at 5 C.F.R. § 531.203(b) and state as follows:

"(b) Superior qualifications appointments.

(1) A 'superior qualifications appointment' means an appointment to a position in Grade 11 or above of the General Schedule at a rate above the minimum rate of the appropriate grade under authority of section 5333 of title 5, United States Code, and with the prior approval of the Commission (except for positions in the Library of Congress), because of the superior qualifications of the candidate." (Underscoring supplied.)


It cannot be stated that the failure to appoint Ms. Marple at grade GS-15, step 7, level from the date she entered on duty was a violation of a nondiscretionary administrative regulation

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or policy or that such failure caused her to be deprived of a right granted by statute or regulation. On the contrary, Mr. Train had no authority to appoint Ms. Marple at grade GS-15, step 7, level without the prior approval of the CSC which he did not receive. It is indeed unfortunate that Mr. Train's understanding with Ms. Marple was not implemented through a timely request and approval of a higher step but there is no way we can waive the requirement of the statutory regulation cited above. In this regard this case is similar to that in Matter of William Rankin, Jr., 56 Comp. Gen. 432 (1977) in which a regulation requiring the CSC's prior approval of promotions to grades GS-16, GS-17, and GS-18 levels was held to bar the allowance of a retroactive promotion to an employee detailed to a grade GS-17 position prior to Commission approval of his promotion to that position. In Rankin we stated:

"\* \* \* the above-cited regulations are quite clear that Commission approval of the appointee's qualifications must be granted prior to promoting the appointee to a supergrade position. An agency cannot unilaterally place an employee in a supergrade position and at some later date request Commission approval of his qualifications for the purpose of granting him a retroactive appointment."

In the same manner we feel that Mr. Train was required to gain prior Commission approval for placing Ms. Marple in a rate above the minimum rate of the appropriate grade and his failure to do so in a timely fashion does not present adequate reason for granting her a retroactive increase in pay.

  
Deputy Comptroller General  
of the United States