

DOCUMENT RESUME

03548 - [A2693060]

[Retroactive Promotion and Backpay]. B-189384. September 22, 1977. 4 pp.

Decision re: Beulah A. Walker; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.  
Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Army: National Guard Bureau.

Authority: 31 U.S.C. 71a (Supp. IV). 5 U.S.C. 5335(a). 43 Comp. Gen. 507. B-187234 (1976). B-177739 (1973).

The claimant appealed a decision which disallowed her claim for backpay allegedly earned as a federal employee. The employee had been promoted on February 6, 1966, to NGC grade 5, step 3, rather than to NGC grade 5, step 4, as required by the regulations. Since the claim was filed with GAO more than 6 years from the date the claim accrued, no element of the claim accruing before February 28, 1971 was considered. (Author/SC)

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The Comptroller General  
of the United States



**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20540**

**FILE: B-189384**

**DATE: September 22, 1977**

**MATTER OF: Beulah A. Walker - Retroactive Promotion  
and Backpay**

**DIGEST:** National Guard employee filed claim with General Accounting Office on February 28, 1977, for backpay. Employee had been promoted on February 6, 1966, to NGC grade 5, step 3, rather than NGC grade 5, step 4, as required by regulations. Under 31 U.S.C. § 71a (Supp. IV, 1974), claim against the United States is barred unless presented to this Office within 6 years from date claim accrues. Therefore, we may not consider any element of claim accruing before February 28, 1971.

This action is in response to a letter received in our Office on June 13, 1977, from Ms. Beulah A. Walker, appealing the April 22, 1977, settlement issued by our Claims Division which disallowed her claim for backpay allegedly earned as an employee of the Army National Guard.

Ms. Walker contends that on February 6, 1966, she was erroneously promoted from NGC grade 3, step 10, to NGC grade 5, step 3, in violation of regulations which required that an employee promoted to a higher grade be placed at a step in the new grade which exceeds his existing rate of basic pay by not less than two step increases of the grade from which promoted. In its administrative report, the National Guard acknowledges that an administrative error had occurred and that, if Ms. Walker had been properly promoted, she would have been placed in the NGC grade 5, step 4, level, rather than at the NGC grade 5, step 3, level. Ms. Walker originally claimed entitlement to a retroactive promotion and backpay dating from February 6, 1966, the effective date of her erroneous promotion. This claim was denied by our Claims Division on April 22, 1977, on the basis that the claim was barred by the 6-year statute of limitations.

Ms. Walker requests consideration on the basis that, although the original administrative error occurred on February 6, 1966, its effects were continuous in nature because she remained at a lower step in grade than the level to which she was entitled until

B-189384

January 31, 1971, which was the date she was placed in the grade and level to which she would have been entitled had the administrative error not occurred. In addition, Ms. Walker contends that although she was finally placed in the appropriate GS-5, step 6, level on January 31, 1971, she would have been placed at GS-5, step 6, on February 1, 1970, but for the administrative error. She argues that she is now entitled to that period of time in grade for the purpose of within-grade step increases. She believes that these portions of her claim are not barred since they fall within the 6-year period allowed by 31 U.S.C. § 71a (Supp. IV, 1974).

In its administrative report, the National Guard Bureau reconstructed the payroll history regarding Ms. Walker's claim. This reconstructed history reflects the dates of step increases Ms. Walker would have received if the administrative error in setting her pay at NGC grade 5, step 3, rather than NGC grade 5, step 4, had not occurred. This reconstructed payroll history is set forth in its entirety as follows:

NOA [Nature of Action]	EFF DATE	PERS ACTIONS AS THEY OCCURRED		PERS ACTIONS AS THEY SHOULD HAVE OCCURRED	
		ASSN [Assigned] GRADE/STEP	AUTH SALARY	CORRECTED GRADE/STEP	CORRECTED SALARY
	10/31/65	NGC 3/10	\$5409	-	-
Prom	2/06/66	NGC 5/3	\$5523	NGC 5/4	\$5694
GS Sal Inc	7/24/66	NGC 5/3	\$5683	NGC 5/4	
W/I Grd Inc	2/05/67	NGC 5/4	\$5859	Would not have occurred	
GS Sal Inc	10/01/67	NGC 5/4	\$6123	NGC 5/4	\$6123
W/I Grd Inc	2/04/68			NGC 5/5	\$6309
GS Sal Inc	7/07/68	NGC 5/4	\$6307	NGC 5/5	\$6498
Appt	1/01/69	GS 5/4	\$6307	GS 5/5	\$6498
W/I Grd Inc	2/02/69	GS 5/5	\$6498	Would not have occurred	
GS Sal Inc	7/06/69	GS 5/5	\$7000	GS 5/5	\$7000
Prom - Temp NTE 2/9/70	10/12/69	GS 6/4	\$7569	GS 6/4	\$7569

B-189384

Chg to Lower Grd	2/10/70	GS 5/5	\$7000	*GS 5/6	\$7206
GS Sal Inc	4/15/70	GS 5/5	\$7420	GS 5/6	\$7638
	Retro to 01-04-70				
GS Sal Inc	1/03/71	GS 5/5	\$7862	GS 6/6	\$8093
W/I Grd Inc	1/31/71	GS 5/6	\$8093	Would not have occurred	
Prom	8/29/71	GS 6/5	\$8759	GS 6/5	\$8759
GS Sal Inc	1/02/72	GS 6/5	\$9241	GS 6/5	\$9241
GS Sal Inc	1/14/73	GS 6/5	\$9716	GS 6/5	\$9716
W/I Grd Inc	8/26/73	GS 6/6	\$10002	GS 6/6	\$10002
GS Sal Inc	10/07/73	GS 6/6	\$10472	GS 6/6	\$10472
QSI	12/16/73	GS 6/7	\$10771	GS 6/7	\$10771
GS Sal Inc	10/06/74	GS 6/7	\$11369	GS 6/7	\$11369
GS Sal Inc	10/05/75	GS 6/7	\$11938	GS 6/7	\$11938
W/I Grd Inc	8/22/76	GS 6/8	\$12270	GS 6/8	\$12270
GS Sal Inc	10/03/76	GS 6/8	\$12792	GS 6/8	\$12792

\*Would have been entitled to within-grade increase, Step 6, when demoted back to previous grade from a temporary promotion. Within-grade increase was due February 1, 1970 but would have been held in abeyance due to temporary promotion.

Pursuant to 31 U. S. C. § 71a, any claim or demand against the United States is barred unless it is presented to the General Accounting Office within 5 years from the date such claim accrues. Since Ms. Walker's claim was not received by this Office until February 28, 1977, any element of the claim accruing before February 28, 1971, is barred. See Matter of Edward Rothenberg, B-187234, December 8, 1976. Accordingly, we are precluded under the provisions of 31 U. S. C. § 71a from making a retroactive correction of the erroneous promotion which took place on February 6, 1966, and from considering the claim for backpay for the period from February 6, 1966, until February 27, 1971.


In examining the reconstructed payroll history, we note that on February 28, 1971, the beginning of the period which may be considered under 31 U. S. C. § 71a, Ms. Walker was properly entitled to a GS-5, step 6, rate of pay, i. e., had the administrative error not occurred. On that date she was in fact a GS-5, step 6, since her actual grade/step came into alignment with such grade/step on January 31, 1971. In effect, the administrative error was rectified on January 31, 1971, when Ms. Walker was placed in the grade and step to which she would have been entitled

B-189384

absent the original error. Since January 31, 1971, she has been in the grade and step she would have been in had no administrative error occurred, and therefore, there is no entitlement to retro-active adjustment of pay.

Ms. Walker's contention that had she been a GS-5, step 6, on February 1, 1970, rather than on January 31, 1971, she would get her next within-grade step a year sooner, is without merit. We have in the past allowed reconstruction of payroll records where an employee was underpaid as a result of having received step increases at a later time than they should properly have been received due to an administrative error. See B-177739, June 5, 1973. The record here, however, shows that on August 29, 1971, Ms. Walker was promoted to a GS-6, step 5, level. Such a promotion is an "equivalent increase" under 5 U.S.C. § 5335(a) (1970), and, therefore, the waiting period for within-grade step increases began anew on that date. Accordingly, the extra year she would have spent as a GS-5, step 6, could not be part of the time spent as a GS-6, step 5, for purposes of within-grade increases. See 43 Comp. Gen. 507 (1964).

Accordingly, the claim of Ms. Beulah A. Walker for backpay is denied, and the action of our Claims Division on April 22, 1977, is affirmed.

  
Deputy Comptroller General  
of the United States