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*Barbara W. Scheaffer*

**DECISION**



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

FILE: B-200717

DATE: January 28, 1981

MATTER OF: Barbara W. Scheaffer - *Claim For* Retroactive Promotion ]

**DIGEST:** Agency improperly evaluated a GS-4 employee's prior experience when employee applied for a new position under merit promotion procedures causing employee to be selected for new position at a GS-4 grade instead of GS-5. Employee is not entitled to retroactive promotion since the error did not prevent a personnel action from taking effect as originally intended, the employee was not deprived of a right granted by statute or regulation nor was a nondiscretionary agency regulation or policy violated.

By a letter dated October 1, 1980, Martha E. Albrecht, Director, Finance Department, Navy Regional Finance Center, Washington, D.C., requested an advance decision on the claim of Ms. Barbara W. Scheaffer for a retroactive promotion. The claim is denied since an employee of the Federal Government is entitled only to the salary of his or her appointed position and a promotion may not be made effective retroactively in the absence of specific statutory authority.

Ms. Barbara Scheaffer, a GS-4, Computer Aide with the Naval Reserve Personnel Center, New Orleans, Louisiana, filed an application under merit promotion plan procedures for the position of Accounting Technician, GS-4 or GS-5, Naval Reserve Support Office, New Orleans. Her qualifications for this position were reviewed by a personnel specialist at the Consolidated Civilian Personnel Office (CCPO), New Orleans, who determined that Ms. Scheaffer met qualification requirements for the GS-4 level. Her name was referred for consideration as an Accounting Technician, GS-4, she was selected, and she was reassigned to that position on April 6, 1980.

Subsequently Ms. Scheaffer was notified that she would have to serve a minimum of 6 months in the position to qualify for promotion to the GS-5 level. On May 12, 1980, she contacted the CCPO disputing this determination. In accordance with grievance procedures a review was made of Ms. Scheaffer's qualifications resulting in a determination that she was qualified for and should have been referred for consideration and selection as an Accounting Technician, GS-5. On May 19, 1980, she was informed of this

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determination, and she was promoted to grade GS-5 effective June 1, 1980. On July 27, 1980, Ms. Scheaffer requested that her promotion to grade GS-5 be made effective on April 6, 1980, the date she was reassigned to the position of Accounting Technician, and that she be paid based on the difference in salary between grades GS-4 and 5 for the period from April 6, 1980, to June 1, 1980.

Backpay is awarded under the authority of 5 U.S.C. 5596 as a remedy for wrongful reduction in grade, removals and suspensions, and other unjustified or unwarranted actions affecting pay or allowances. A prerequisite for the award of backpay is a determination by appropriate authority that an employee has undergone an unjustified or unwarranted personnel action. We have recognized as unjustified and unwarranted actions, clerical or administrative errors that (1) prevented a personnel action from taking effect as originally intended, (2) deprived an employee of a right granted by statute or regulation, or (3) would result in failure to carry out a nondiscretionary administrative regulation or policy if not adjusted retroactively. See 55 Comp. Gen. 836 (1976) and 54 id. 888 (1975).

It is a well settled rule that the granting of promotions from grade to grade is a discretionary matter primarily within the province of the administrative agency involved. 54 Comp. Gen. 263 (1974); William Scott, B-182565, May 25, 1975. By statute, regulation or agency policy mandating promotion within a particular time frame or under specific conditions, the granting of a promotion may become nondiscretionary, or a matter of right so as to warrant backpay under the standards cited above. See Joseph Pompeo, B-186916, April 25, 1977; cf. 58 Comp. Gen. 59 (1978). However, absent such law, regulation or policy, a promotion may be made retroactively effective only on the basis of a clerical or administrative error that prevented its taking effect as originally intended.

There is nothing in the record to indicate that the promotion of Ms. Scheaffer was nondiscretionary. No statute, regulations, labor-management agreement, or other binding agency directive mandated the promotion of Ms. Scheaffer after a given time had passed. Nor does there appear to be any agency regulation, policy or procedure regarding processing time for promotion requests.

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The record does indicate that there was an error in evaluating Ms. Scheaffer's qualifications. The particular error, however, was not of a type that would support the granting of a retroactive promotion.

Such clerical or administrative error as will support retroactive promotion must occur after approval of the promotion by the authorized official but before the acts necessary to effective promotion have been carried out. Because promotions are discretionary, an error that occurs before the authorized official has had the opportunity to exercise his discretion with respect to approval or disapproval does not establish an intent to promote at any particular time. After-the-fact statements by that official as to what would have been his determination had the error not occurred are not sufficient to establish the necessary intent. Janice Levy, B-190408, December 21, 1977.

The error in evaluating Ms. Scheaffer's qualifications occurred prior to approval of her promotion. As a practical matter, while it prevented the authorized official from exercising his discretion and forming an intent with respect to her promotion to GS-5, it cannot be said to have prevented that promotion from taking effect as originally intended. As we held in Maureen Barry, B-189678, December 21, 1977, also involving an agency's improper evaluation of the claimant's experience which delayed her promotion, an error in evaluating an employee's qualifications is not an administrative or clerical error which would warrant giving retroactive effect to a delayed promotion.

For the reasons stated above we hold that Ms. Scheaffer's promotion to GS-5 may not be effected retroactively.

*Milton J. Fowler*

For the Comptroller General  
of the United States