

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

FILE: B-221176

DATE: April 24, 1986

MATTER OF: Rufus R. Johnson

DIGEST:

Where, as the result of a discrimination complaint, an employee is promoted to GS-12 retroactive to a date prior to the date he was awarded a quality step increase in his GS-11 position, amounts attributable to the quality step increase in the lower grade are to be deducted from the pay of the higher grade position to determine the employee's backpay entitlement. Because a quality step increase may not be granted retroactively, the employee may not be granted a quality step increase effective retroactive to a date 1 year after the effective date of his retroactive promotion to GS-12.

We have been asked to determine the effect of a quality step increase on the pay entitlement of an Army employee who, as the result of an Equal Employment Opportunity settlement action, was retroactively promoted from GS-11 to GS-12 prior to the date the quality step increase took effect in the lower grade position.^{1/} Amounts the employee received in his lower grade position, including amounts attributable to the quality step increase, are to be set off against the salary of the employee's higher grade position in determining the amount of his backpay award and the employee may not be retroactively awarded a quality step increase in the higher grade position.

On January 4, 1981, Mr. Rufus R. Johnson, a Supply Officer with an Army activity in Germany, was awarded a quality step increase from GS-11, step 7 to GS-11, step 8. Pursuant to the settlement in January 1983 of his Equal

^{1/} The request was made by William M. Frailey, Chief, Civilian Personnel Center, Department of the Army, Alexandria, Virginia.

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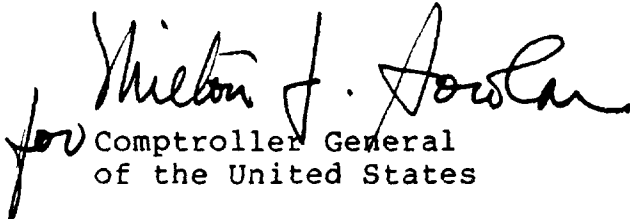
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Employment Opportunity complaint, Mr. Johnson was retroactively promoted to grade GS-12, step 3 effective February 5, 1980. In determining the amount of his backpay award, the Army asks whether it is required to deduct amounts attributable to the quality step increase in his GS-11 position and, if so, whether Mr. Johnson instead may be granted a quality step increase in the GS-12 position to which he was retroactively promoted.

We have held that an employee who is awarded a retroactive promotion incident to the settlement of a discrimination complaint is entitled to backpay based on the salary of the position to which he is promoted less amounts earned in the lower grade position, including amounts attributable to a quality step increase awarded in the lower grade position during the period covered by the retroactive personnel action. Mary Ellen Casco, B-217501, March 12, 1986. Under this decision, the amounts Mr. Johnson received in his GS-11 position which are attributable to his award of a quality step increase are to be deducted from the salary of his GS-12 position in determining the amount of his backpay award.

In Mary Ellen Casco, B-217501, supra, we also held that the quality step increase received by the employee in the lower grade position could not be taken into account to increase the rate of pay to which the employee was entitled in the higher grade position. In addition, we have held that a quality step increase may not be granted on a retroactive basis. James Byrnes, B-193583, May 17, 1979. Therefore, Mr. Johnson may not be awarded a quality step increase in his GS-12 position based on his supervisor's representation that he would have recommended him for promotion 1 year after the effective date of his promotion to the higher grade position.

for 
Comptroller General
of the United States