

DOCUMENT RESUME

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[Retroactive Promotions for Internal Revenue Agents]. B-186916.
April 25, 1977. 3 pp.

Decision re: Joseph Escapo; by Robert P. 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: Internal Revenue Service.

Authority: Back Pay Act (5 U.S.C. 5596 (Supp. V)); 55 Comp. Gen.
42. B-182565 (1975). 54 Comp. Gen. 263. 55 Comp. Gen. 42. 54
Comp. Gen. 888. 54 Comp. Gen. 69. Tierney v. United States,
168 Ct. Cl. 77 (1968). Weinberg v. United States, 192 Ct.
Cl. 24 (1970).

Billy J. Brown, Director, Personnel Division, IRS,
requested a decision on the propriety of granting retroactive
promotions to eight IRS agents whose promotions were delayed due
to administrative oversight. If the agents' performances are
certified as acceptable, they are entitled to retroactive
promotions with backpay where the agency failed to comply with
its nondiscretionary policy to promote on a 1-year interval.
(RRS)

01995.

DECISION



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

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FILE: D-186916

DATE: April 25, 1977

**MATTER OF: Joseph Pompeo, et al., Internal Revenue
Agents - Retroactive promotions**

DIGEST: Promotions for eight IRS agents in career-ladder positions were delayed one or two pay periods due to administrative oversight in failing to submit requests for promotion for approval. Agency has policy to promote in such cases where supervisor certifies to an acceptable level of competence. Agents are entitled to retroactive promotions with backpay where agency failed to comply with its nondiscretionary policy to promote on 1-year interval if agent's performance was certified as acceptable.

This action is in response to the request for an advance decision dated July 6, 1976, from Mr. Billy J. Brown, Director of the Personnel Division, Internal Revenue Service, Department of the Treasury, concerning the propriety of granting retroactive promotions to eight IRS agents whose promotions were delayed one or two pay periods due to administrative oversight.

The record indicates that seven of the agents were part of a group of 26 Revenue Agents hired at grade GS-5 and assigned to the Philadelphia District Office. These agents were eligible for promotion to grade GS-7 under career-ladder procedures on June 23, 1974. All 26 agents were evaluated in May 1974, and certified by their supervisor as having reached an "Acceptable Level of Competence" for purposes of a within-grade increase. However, seven of the 26 agents were reassigned to another segment of the Philadelphia District Office, and, due to an administrative oversight, requests for promotions for these seven agents were not submitted at the same time as those for the other 19 agents. The other 19 agents were promoted on June 23, 1974, while the remaining seven agents were promoted one pay period later on July 7, 1974. The District Director of the IRS has stated that had it not been for the oversight, these seven agents would have been promoted on June 23, 1974.

The eighth agent in this case, Special Agent Joseph Pompeo, was assigned to the Newark District Office in a career-ladder position and was eligible for a promotion effective August 3, 1975. The administrative report states that Mr. Pompeo's supervisor discussed the promotion with him, certified his performance for a within-grade increase, and advised

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him that his papers would be submitted for promotion effective August 3, 1975. However, in the supervisor's absence, the acting supervisor through administrative oversight failed to submit the request for promotion, and, we have been informally advised that Mr. Pompeo's promotion was delayed two pay periods until August 31, 1975.

The agency recommends that in both instances the promotions be made retroactive to the date intended. The agency points out that 3 months prior to eligibility for a within-grade increase or promotion an employee's supervisor certifies on IRS Form 3860 that the employee is performing at an Acceptable Level of Competence, and that Form becomes the official certification that the employee "warrants a pay increase." The agency states further that:

"For employees in career ladder positions, a Form 3860 certifying to an Acceptable Level of Competence is fully indicative that the employee should be promoted, since that certification is the equivalent of saying that the employee has met all the performance requirements for a career-ladder promotion. In effect, we have an unwritten Agency policy to promote in such cases. However, the promotion itself requires a separate recommendation from the supervisor through the preparation of an SF-52, and work pressures or breakdowns in communication occasionally result in errors of omission. Even when that happens, though, we feel that the Acceptable Level of Competence certification is evidence of our intent to promote."

Finally, the agency points to its recruiting fliers, which promise a promotion upon satisfactory completion of one year in grade, as further evidence of the agency's intent.

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); B-182565, May 29, 1975; Tierney v. United States, 168 Ct. Cl. 77 (1964); and Weinberg v. United States, 192 Ct. Cl. 24 (1970). In addition, salary increases are ordinarily not made retroactively. 40 Comp. Gen. 207 (1960); and B-182565, supra. However, we have recognized exceptions to this latter rule where an administrative or clerical error (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. 42 (1975); 54 id. 888 (1975); and decisions cited therein. We have also recognized that these above-cited


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exceptions may constitute unjustified or unwarranted personnel actions under the Back Pay Act, 5 U.S.C. 5596 (Supp. V, 1975). 55 Comp. Gen. 42, supra.

The agency argues that its promotion policy is nondiscretionary and that both its internal regulations and its recruitment fliers evidence the intent to promote on the 1-year interval if the agent has performed at an Acceptable Level of Competence. In addition, we have been informally advised that there have been no instances in which a Revenue Agent or Special Agent has been certified as performing at an Acceptable Level of Competence and then not received a career-ladder promotion on the 1-year interval.

Therefore, based upon the record before us, we conclude that the failure to promote these eight agents on their 1-year anniversary dates resulted from a failure to carry out a nondiscretionary administrative policy and as such constituted an unjustified or unwarranted personnel action under the Back Pay Act, 5 U.S.C. 5596 (Supp. V, 1975). 55 Comp. Gen. 42, supra, 54 id. 888, supra, 54 id. 69 (1974).

Accordingly, we have no objection to the IRS processing retroactive promotions for these eight agents.


Deputy Comptroller General
of the United States