

# DECISION



11467 PLM-11  
Mr. AGAZARIN  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-193918

DATE: September 21, 1979

MATTER OF: Vaughn W. Peavy - [Claim for Retroactive Promotion and Backpay]

- DIGEST: 1. Employee claims retroactive promotion and accompanying backpay incident to personnel office's failure to process papers associated with promotion action. Where record does not show that agency official authorized to approve the promotion had done so, and in the absence of a nondiscretionary agency policy or regulation requiring that employee be promoted, there is no basis to allow a retroactive promotion with accompanying backpay, and the claim may not be allowed.
2. Employee claims a retroactive promotion and backpay on the basis that he held a "like job" with a "like job description" to that of another employee who occupied a higher grade position. Claim may not be allowed as generally an employee is entitled to the salary of the position to which he has been appointed regardless of the duties he may perform.

By letter dated January 4, 1979, Mr. Vaughn W. Peavy, an employee of the Department of the Army, has appealed from our Claims Division's November 15, 1978 settlement which disallowed his claim for a retroactive promotion and backpay for the period from February 13, 1970, to February 28, 1971. Mr. Peavy's claim is based upon the alleged failure of the agency's personnel office to properly process a pending promotion action and his performance of duties associated with a higher grade position.

Our Claims Division's disallowance is sustained on the basis that the record neither establishes that the appropriate administrative official approved Mr. Peavy's promotion nor shows the existence of an administrative requirement that he be promoted at a specified time. Under the circumstances he is entitled only to the salary of the position to which he had been appointed.

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The record shows that in January 1970 the claimant, a civilian employee at Fort Huachuca, Arizona, interviewed for a promotion to a GS-13, Communications Specialist position in another unit at Fort Huachuca. Mr. Peavy states that he was accepted for that position and that a release date of February 13, 1970, was arranged with his employing organization. He further states that the Civilian Personnel Office never processed the papers associated with his promotion action. Mr. Peavy contends that the arrangement of a "release date" constituted a valid appointment to the higher grade position. Accordingly, he has claimed a retroactive promotion with accompanying backpay from February 13, 1970, to February 28, 1971, the date he was promoted to the GS-13 level in his existing position.

Mr. Peavy notes that at the time he was promoted he held a "like job" with "like job description" to that of another employee who was promoted to grade GS-13 on September 28, 1970. Accordingly, in the alternative, he requests a promotion and backpay retroactive to September 28, 1970, the date the other employee was promoted.

The agency has indicated that the Standard Form 52 associated with Mr. Peavy's consideration for promotion in early 1970 is no longer available. The agency has also advised us that Mr. Peavy's promotion to a higher grade position was not effected as higher level management required that professional engineers be assigned to this and several other newly established positions.

Generally, the granting of promotions from grade to grade is a discretionary matter primarily within the province of the administrative agency involved. See Tierney v. United States, 168 Ct. Cl. 77 (1964), Wienberg v. United States, 192 Ct. Cl. 24 (1970).

As a general rule an administrative change in salary may not be made retroactively effective in the absence of a statute so providing. 26 Comp. Gen. 706 (1947), and 40 *id.* 207 (1960). However, we have permitted a retroactive personnel action where clerical or administrative errors occurred that (1) prevented a personnel action from taking effect as originally intended, (2) deprived an employee of

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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. We have recognized that the above-stated exceptions to the general rule prohibiting retroactively effective personnel actions may constitute "unjustified or unwarranted personnel actions" under the Back Pay Act, 5 U.S.C. § 5596 (1976). Matter of Joseph Pompeo, et al, B-186816, April 25, 1977 and 55 Comp. Gen. 42 (1975).

Mr. Peavy has not introduced any evidence to establish that his case falls within any of the above exceptions. With respect to delays or omissions in the processing of promotion requests, the delay or omission must have occurred after approval of the promotion by the official having delegated authority to approve the promotion to be regarded as administrative or clerical error. Where the delay or omission occurs prior to approval by such responsible official the intent of the agency to promote cannot be established. See B-180046, April 11, 1974.

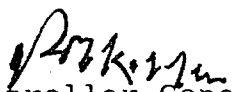
There is nothing in the file which shows that the agency official with the authority to approve promotions had approved Mr. Peavy's promotion to the Communications Specialist position. For this reason and because the record does not show any nondiscretionary agency regulation or policy which would have required that he be promoted to that position at any specified time, if at all, we cannot find that there has been an unjustified or unwarranted personnel action which would allow a retroactive promotion action with accompanying backpay.

Concerning Mr. Peavy's claim based on his performance of the "like" duties of a higher grade position during the period September 28, 1970, to February 27, 1971, the general rule is that an employee is entitled only to the salary of the position to which he has been appointed regardless of the duties he may perform. See Coleman v. United States 100 Ct. Cl. 42 (1943); Dianish v. United States, 183 Ct. Cl. 702 (1968); and Patrick L. Peters, B-189663, November 23, 1977. An employee who is performing duties of a grade level higher than that of the position to which he is appointed is not entitled to the salary of a higher

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level position unless and until the position is classified to the higher grade and he is promoted to it. Marion McCaleb, 55 Comp. Gen. 515 (1975).

Accordingly, the disallowance of Mr. Peavy's claim is sustained.

  
Deputy Comptroller General  
of the United States