

Mr. Pool  
PEMI 14682

**DECISION**



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

*Request For*

FILE: B-198983

DATE: August 13, 1980

MATTER OF: Alfred G. Bowen - Retroactive promotion *with Backpay*

**DIGEST:** Grade MG-8 employee of Panama Canal Commission, who between December 19, 1979, and January 13, 1980, performed duties of higher-grade MG-9 position, is not entitled to retroactive promotion with backpay based on duties performed since Federal employee is entitled only to salary of position to which he is actually appointed regardless of duties performed. Supervisor's intent that employee be promoted does not itself provide basis for retroactive promotion since clerical or administrative error prior to promotion approval by authorized official does not constitute such administrative error as will support award of retroactive promotion and backpay.

D. P. McAuliffe, Administrator, Panama Canal Commission, has requested an opinion on whether the Panama Canal Commission may authorize the retroactive promotion of Mr. Alfred G. Bowen, a craftsman who performed duties of a position at a level higher than his regular position during the period from December 19, 1979, to January 12, 1980. For the reasons which follow retroactive promotion may not be properly authorized in the circumstances presented.

Briefly, the record shows that Mr. Bowen worked as a Water Treatment Plant Operator, MG-8, with the Panama Canal Commission's Electrical Division when he was permanently promoted to his present position as a Boiler Plant Operator, MG-9, on January 13, 1980. However, on two different occasions prior to his permanent promotion, Mr. Bowen was temporarily promoted to the position of Boiler Plant Operator. From July 1 through September 30, 1979; and again from November 18, through December 18, 1979, Mr. Bowen received the additional

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compensation in connection with these periods of temporary promotion.

The record further provides that the temporary promotion on November 18, 1979, was made to fill a vacancy created by the unexpected retirement of the incumbent. Although Mr. Bowen's supervisors in the Electrical Division desired to extend the duration of the temporary promotion past December 18, 1979, they failed (through administrative oversight) to so advise the agency's personnel office. Accordingly, on that date, action was taken automatically by the personnel office to return Mr. Bowen to his regular position. As a result, although Mr. Bowen continued to perform the duties of the higher-grade position after December 18, 1979, he did not receive the compensation of the higher-grade position until his permanent promotion on January 13, 1980.

In these circumstances, and especially in view of the facts that (i) it was the intention of the employee's supervisors that he remain in the higher position on a permanent basis after the incumbent retired in November 1979, and (ii) Mr. Bowen was expected to (and, in fact, did) perform the duties of Boiler Plant Operator throughout the period in question, the agency desires to effect a retroactive promotion in Mr. Bowen's case for the period from December 19, 1979, through January 12, 1980.

We have long held that the granting of promotions is a discretionary matter within the province of the administration of the agency involved, and the effective date of a change in salary resulting from a promotion or other administrative action is the date action is taken by the administrative officer vested with necessary authority or a subsequent date specifically fixed by him. Carolyn Whitlock, 58 Comp. Gen. 290 (1979), and decisions cited therein. Thus, as a general rule, we have held that a promotion action may not be made retroactive so as to increase an employee's right to compensation. See, for example, 40 Comp. Gen. 207 (1960). The exceptions to this rule, and the cases where backpay may be awarded for failure to promote an employee earlier, are instances in which an administrative or clerical error (i) prevented a personnel action from being effected as originally intended (ii) resulted in a nondiscretionary administrative regulation or policy not being carried out, or (iii)

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deprived the employee of a right granted by statute or regulations. Douglas C. Butler, 58 Comp. Gen. 51 (1978), and decisions cited therein.


In cases involving approval of retroactive promotions on the ground of administrative or clerical error, it is necessary that the official having delegated authority to approve the promotion has done so. Thus, a distinction is drawn between those errors that occur prior to approval of the promotion by the properly authorized officials and those that occur after such approval but before the acts necessary to effective promotion have been fully carried out. The rationale for drawing this distinction is that the individual with authority to approve promotion requests also has the authority not to approve any such request, unless his exercise of disapproval authority is constrained by statute, administrative policy or regulation. Where the error or omission occurs before he exercises that discretion, administrative intent to promote at any particular time cannot be established. After the authorizing official has exercised his authority by approving the promotion, all that remains to effectuate that promotion is a series of ministerial acts. In that case, since administrative intent to promote is established, retroactive promotion as a remedy for failure to accomplish those ministerial acts is appropriate. John Cahill, 58 Comp. Gen. 59 (1978) citing Janice Levy, B-190408, December 21, 1977. Since Mr. Bowen's retroactive promotion would be predicated upon clerical or administrative error prior to action by an authorized official, it is contrary to the applicable authority.

Similarly, the fact that Mr. Bowen performed higher grade duties without commensurate compensation between December 19, 1979, and January 13, 1980, does not in itself create an entitlement to retroactive promotion and backpay for the period in question. This Office recognized that there are innumerable instances in the Government service where employees of a lower classification perform duties of a higher classification, but as a general rule an employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties he performs. When an employee performs duties normally reserved to employees in a grade level higher than the one he holds, he is not

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entitled to the salary of the higher grade level until such time as he is promoted to that grade. Clem E. Gifford, B-193834, June 13, 1979, and court cases cited therein. This reasoning controls Mr. Bowen's case especially since his performance in the higher-grade position was not of sufficient duration to qualify for retroactive temporary promotion and backpay for an overlong detail in accordance with our decisions in Everett Turner and David L. Caldwell, 56 Comp. Gen. 427 (1977), affirming 55 Comp. Gen. 539 (1975).

Accordingly, Mr. Bowen is not entitled to retroactive promotion in the circumstances presented.



For The Comptroller General  
of the United States