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DECISION



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

FILE: B-214531

DATE: August 24, 1984

MATTER OF: Doris J. Lindstrom

DIGEST:

A former employee of the Merit Systems Protection Board is not entitled to a retroactive promotion from grade GS-7 to GS-8 on the basis that she interviewed for a GS-8 position. As a general rule a personnel action cannot be made effective retroactively so as to increase an employee's compensation.

A former employee of the Merit Systems Protection Board is not entitled to a retroactive promotion and backpay from grade GS-7 to GS-8 on the grounds that she claims to have been interviewed for a GS-8 position before she transferred to the Board. An employee of the Federal Government is entitled only to the salary of his or her appointed position, and as a general rule a promotion action may not be made retroactively so as to increase an employee's right to compensation. ^{1/}

FACTS

Mrs. Doris J. Lindstrom, then a secretary (stenography), GS-318-7/4, with the General Services Administration, interviewed for a position at the Merit Systems Protection Board in early 1979. Mrs. Lindstrom alleges that the position for which she interviewed was a GS-318-8. However, she was appointed/transferred to a GS-318-7/4 secretary (stenography) position at the Board on April 22, 1979. Mrs. Lindstrom believes that she was given an incorrect SF-50 (Notification of Personnel Action) and job description upon her transfer. While she states that she made several attempts to have this error corrected, no official action was ever taken, and there is no record of a formal complaint by Mrs. Lindstrom during her employment by the Board. On September 16, 1980, she retired from the Federal Service.

Mrs. Lindstrom filed a claim for a retroactive promotion to grade GS-8 on January 26, 1982, with our Claims

^{1/} The decision results from the appeal of Mrs. Doris J. Lindstrom from the action of our Claims Group, on claim No. Z-2843944, issued February 23, 1983, which denied her claim for a retroactive promotion.

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Group. In addition, she also alleged sex and age discrimination. Her claim was denied in Settlement Certificate No. Z-2843944, issued February 23, 1983. By letter of January 3, 1984, she requested reconsideration of that settlement.

ANALYSIS

At the outset we note that we are without authority to consider Mrs. Lindstrom's claims based on allegations of discrimination. Martha B. Poteat, B-196019, April 23, 1980. The material supplied to our Office by Mrs. Lindstrom shows that she has contacted the Office of Equal Opportunity at the Merit Systems Protection Board regarding these allegations. They have responded to her allegations and have advised her of avenues of appeal.

As to the claim for retroactive promotion and back pay, an employee of the Federal Government is entitled only to the salary of his or her appointed position regardless of the duties actually performed. Dianish v. United States, 183 Ct. Cl. 702 (1968), and Thomas Davis, B-189673, February 23, 1978. The granting of promotions from grade to grade is a discretionary matter primarily within the province of the administrative agency concerned. 54 Comp. Gen. 263 (1974). Generally personnel actions may not be effected retroactively so as to increase the right of an employee to compensation. Exceptions to this rule have been made where a personnel action was not accomplished as intended because of administrative or clerical error or because of the error a nondiscretionary administrative regulation or policy was not followed. An exception to the general rule has also been made where an employee has not been given a right granted by statute or regulation. See Douglas C. Butler, 58 Comp. Gen. 51 (1978). We have recognized that these exceptions may constitute an unwarranted or unjustified personnel action under the Back Pay Act, 5 U.S.C. § 5596.

CONCLUSION

It is clear from the record before us that the circumstances of Mrs. Lindstrom's case do not fall within any of the exceptions. In fact up until the time of her retirement Mrs. Lindstrom had not been appointed to or promoted to a GS-8 position at the Board.

Claims against the Government are settled by the General Accounting Office on the basis of a written record, and the burden of proof is on the claimant. Gene Daly, B-197386, June 15, 1983. On the record before us we find no basis upon which Mrs. Lindstrom may be promoted retroactively. Accordingly, the settlement of February 23, 1983, is sustained.

A handwritten signature in cursive script, reading "Milton J. Aroslan".

Acting Comptroller General
of the United States