

DECISION

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

FILE: B-216970

DATE: April 1, 1985

MATTER OF: Dewey R. Castelein - Change in Conversion
to Permanent Appointment

DIGEST:

An employee who was serving under a temporary appointment at the grade GS-2 level, was converted to a permanent appointment and promoted to the grade GS-3 level. One month later the employee was promoted to a grade GS-4 position, but his subsequent promotion to the grade GS-5 level 6 months later was denied under time-in-grade restrictions applying to promotions under nontemporary appointments. Although the union argues that the employee was prematurely converted to a permanent appointment which later affected his entitlement to promotion, we hold that the conversion to a permanent appointment was proper and may not be changed retroactively.

ISSUE

The issue in this decision is whether an employee whose temporary appointment was converted to a permanent appointment and, as a result, his subsequent promotion to the grade GS-5 level was delayed due to time-in-grade restrictions may have the conversion retroactively changed. We hold that where the conversion of the appointment was not erroneous, the agency may not retroactively change that action in order to allow the employee an earlier promotion to the grade GS-5 level consistent with the time-in-grade restrictions on promotions.

BACKGROUND

This decision is in response to a request from Local 1626, American Federation of Government Employees, concerning the claim of Mr. Dewey R. Castelein, an employee of the Defense Property Disposal Service, Battle Creek, Michigan.

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The record before us indicates that on December 19, 1983, Mr. Castelein received a temporary appointment to a temporary position not to exceed 700 hours as a clerk-typist, grade GS-2. In February 1984, Mr. Castelein's supervisor, Mr. Charles Jones, requested that Mr. Castelein be promoted to grade GS-3. The agency personnel office first converted Mr. Castelein's appointment to a permanent, excepted appointment as a clerk-typist, grade GS-2. The personnel office then promoted Mr. Castelein to the position of clerk-typist, grade GS-3. Both the conversion of appointment and the promotion actions were effective March 25, 1984.

In April 1984, the supervisor asked that Mr. Castelein be placed in a vacant Property Disposal Clerk (typing) position, grade GS-4 with promotion potential to grade GS-5. In a memorandum dated April 16, 1984, the personnel office stated that the supervisor intended to convert Mr. Castelein's appointment to permanent before his temporary job expired. The supervisor was apparently unaware that Mr. Castelein's appointment had been converted from temporary to permanent in March.

The personnel office then promoted Mr. Castelein to the position of Property Disposal Clerk (typing), grade GS-4, effective April 22, 1984. According to the same April 16, 1984 memorandum, this action was taken "to correct this erroneous appointment," referring to the March conversion to a permanent appointment.

In August 1984, Mr. Jones requested that Mr. Castelein be promoted to grade GS-5, but it appears that the agency denied the promotion on the basis of the time-in-grade requirements for promotions. Specifically, the agency cited Federal Personnel Manual Chapter 300, S6-2(c)(1), which provides that for promotions to the grade GS-5 level or below, the candidate may be advanced if:

"The position is no more than two grades above the lowest grade level he/she held within the preceeding year under nontemporary appointment * * *." (Emphasis added.)

Mr. Castelein received promotions under a permanent, nontemporary appointment from grades GS-2 to 3 and grades GS-3 to 4 in 1984. Thus, he would not be eligible for promotion to grade GS-5 until he had served 1 year in grade at the GS-4 level.

The union argues that the personnel office prematurely converted Mr. Castelein to a permanent appointment in March 1984, and the union asks whether the personnel office may retroactively correct that "error" and whether Mr. Castelein would be entitled to backpay upon correction of the error.

OPINION

The union has cited no legal authority for correcting this alleged error, but they contend that there is nothing which specifically precludes the personnel office from correcting such an error. Our decisions have held generally that personnel actions may not be retroactively changed unless clerical or administrative errors occurred that (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 the failure to carry out a nondiscretionary administrative regulation or policy if not adjusted retroactively. See 54 Comp. Gen. 888 (1975), and decisions cited.

The union has not cited, and we are unaware of, any statute or regulation which has been violated in this case by the agency converting Mr. Castelein's appointment in March 1984. Similarly, we are unaware of any violation of a nondiscretionary agency regulation or policy in this case.

As to whether or not the personnel action was effected as intended, it appears from the personnel memorandum dated April 14, 1984, that in requesting the promotion from grades GS-2 to 3, the supervisor did not intend that Mr. Castelein's appointment be changed. However, the agency personnel office converted his appointment to permanent before promoting him in March 1984, "as is the normal procedure." We have been informally advised by an agency official that it is not unusual to give an employee a permanent appointment under these circumstances at the lower grade levels where there is a large amount of job turnover. In addition, this agency official pointed out that with the permanent appointment, an employee would be covered by reduction-in-force procedures if the temporary position expired, while an employee under a temporary appointment would have no job protection or security if the temporary position expired. The conversion to permanent status would also increase other fringe benefits available to Mr. Castelein such as life insurance and health insurance.

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Based on the record before us, there is nothing to indicate that the March conversion action was improper or without authority. Although such conversion from a temporary to a permanent appointment may not have been intended by Mr. Castelein's supervisor, that fact alone is not sufficient to overturn the action retroactively. We are uncertain why the personnel office characterized this action in the April 16, 1984, memorandum as correcting an "erroneous appointment," but that statement without further support does not alter our view of this case.

In the absence of any error in connection with the conversion of the appointment in March 1984, we hold that the agency may not retroactively change or cancel this action. Mr. Castelein must remain in the grade GS-4 position for 1 year consistent with the applicable time-in-grade requirements.

Accordingly, we deny the union's request for corrective action.

for *Harry R. Van Cleave*
Comptroller General
of the United States