

RELEASED

9



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-191392

NOV 1 1978

Murphysboro, Illinois 62966

Dear

Reference is made to your letter of June 1, 1978, in which you request reconsideration of our decision B-191392, April 20, 1978, which denied you retroactive promotion with backpay incident to your employment with the Occupational Safety and Health Administration (OSHA) of the Department of Labor. You state that the decision was based upon the failure of the approving authority to act upon the recommendation for promotion before your supervisor asked for its return from the personnel office. You urge that it now appears that the request for promotion dated June 11, 1976, was approved prior to the request of your supervisor to withdraw it; however, there is no evidence in the record to support this contention.

In the decision it was pointed out that since your recommendation for a career-ladder promotion was withdrawn by your supervisor prior to discretionary approval by the authorized official, a retroactive promotion with backpay is not permitted, as there was no administrative error justifying retroactive promotion with backpay under 5 U.S.C. 5596. The decision stated that a career-ladder promotion is not mandatory, that withholding it was within the discretionary authority of the approving official, and that the approval authority had not been exercised before the first recommendation for promotion was withdrawn.

Further, there appears no legal basis in your letter to question the discretionary aspects of the denial of the original promotion. The rule is well established that the effective date of a salary change resulting from administrative action is the date of approval thereof by a proper administrative official or such subsequent date as may be administratively fixed. See 21 Comp. Gen. 95, 96 (1941), 30 id. 156 (1950), and decisions cited therein.

We regret that you find the conclusions with respect to your retroactive promotion and backpay unsatisfactory. However, while decisions of our Office may be reconsidered upon presentation of new facts, law or regulations which were not previously

B-191392

considered, you have not presented any pertinent data not previously considered in the determination of your entitlements as set out in the decision.

In the circumstances and since the decision in your case was based upon the law and the cited precedents we find no basis for reconsidering the decision of April 20, 1978.

Sincerely yours,

Edwin J. Monsma

Edwin J. Monsma
Assistant General Counsel