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DECISION



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

50862

FILE: B-183969
B-183985

DATE: JUL 2 1975

MATTER OF: Administrative error - retroactive promotions -
Department of Health, Education, and Welfare

DIGEST: About 300 proposed promotion actions were delayed from 2 weeks to several months before being effected due to breakdown in processing the actions. Where the only officer authorized to approve such actions has not done so there is no administrative error that would permit making such actions effective retroactively.

The Assistant Secretary for Administration and Management, Department of Health, Education, and Welfare (HEW), requests general authorization to effect about 300 promotions retroactively where alleged ineffective management coupled with an unusually heavy workload resulted in the breakdown in the processing of personnel actions at one of the agency's regional offices.

The agency states that new personnel processing procedures designed to prevent another breakdown have been adopted. In pertinent part the agency describes the problem as follows:

"Meanwhile, we have had to deal with the situation as it existed a few months ago. When the Department's headquarters representative arrived at the regional office and began to exercise the authority delegated to him, he found a backlog of approximately three hundred promotion actions in the regional personnel office in various stages of completion. All of these actions had been in the personnel office from one to five months; most of them were career ladder promotion actions where the determinations to be made were relatively simple and failure to complete action on them was due entirely to a breakdown in procedures. SF-52's requesting the promotion actions to be taken were found in desk drawers, stacked in boxes on the floor, buried among other papers on employees' desks, and even filed in personnel folders though the SF-50 had never been prepared. Some of these SF-52's had been reviewed by a personnel staffing specialist who had initialed them to show that regulatory and policy requirements had been met; some had been initialed by

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a personnel clerk, presumably for the same reason; and some had apparently been picked up by a clerk typist who coded them for processing through the Department's Sycor terminal without any review having been made of them.

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"When the appointing official from the Department level assessed the situation, he concluded that immediate action was necessary to avoid any further delays. Since making a determination with respect to each action was impossible in the two days he had before the next pay period began, he approved all of the actions that could be located at that time to be effective on a current basis irrespective of when they were received in the personnel office. As other actions were found through a search of desk drawers and files, he followed the same rule; that is, he effected them on a current basis.

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"In this Department, the Secretary's authority to appoint personnel has been delegated to each regional director and then redelegated by him to each regional personnel officer. Authority to make the selection of a particular individual for a position is vested in line management officials, but the appointing official is the person who is responsible, on behalf of the Secretary, for effecting appointive and other personnel actions and for making sure such actions conform to applicable laws, regulations, policies, and requirements. In applying the general rule that the effective date of a salary change based exclusively on administrative action cannot be earlier than the date when action is taken by the proper administrative official, we have always considered that the appointing official is the 'proper administrative official' whose approval must be obtained before the salary change is effective. In the cases in question, the personnel officer was the only official

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in the personnel office who had been formally authorized to exercise appointing authority, and none of the actions had been approved by him. Were it not for other factors that prevailed in the office, the appropriate conclusion might be that the actions could not be effective earlier than the date they were approved by the Department's official from the headquarters office who was serving as the appointing official. However, we are convinced that such a conclusion would result in a grave injustice to the employees whose promotions were delayed, not because of any management decision to postpone action, but because of an almost total breakdown in the personnel office."

The agency submitted five representative cases and cited three claims on the matter which have been individually filed with our Transportation and Claims Division by Betty J. Phillips, Jean E. Robinett, and Rebecca S. Lopez. The delay in processing the above actions ranged from one pay period to several months.

Specifically, the agency seeks our authorization to effect promotions with a retroactive effective date in those cases where the following apply:

- "1. The SF-52, Request for Personnel Action, was received in the regional personnel office prior to November 15, 1974 (the date when the change in appointing authority occurred);
- "2. A determination is made by this Department in each individual case that, had the regional personnel office been functioning in a normal manner, the promotion would have been effected earlier; and
- "3. All legal and regulatory requirements had been met by the earlier date."

The effective date of a change in salary resulting from administrative action is the date action is taken by the administrative officer vested with the necessary authority or a subsequent date

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specifically fixed by him. 21 Comp. Gen. 95 (1941). Retroactive promotions as such are not sanctioned by this Office. 33 Comp. Gen. 140 (1953); 39 id. 583 (1960). Where, due to a clerical or administrative error, a personnel action was not effected as originally intended, the error may be corrected retroactively to comply with the original intent without violating the rule prohibiting retroactive promotions. In such cases it is necessary that the official having delegated authority to approve the promotions has done so. If, subsequent to such approval, formal action to effect the promotion is not taken on a timely basis as intended by the approving officer, consideration may be given to authorizing a retroactive effective date. B-180046, April 11, 1974.

Additionally, we have construed administrative error to consist of the failure of an agency to carry out written administrative policy of a nondiscretionary nature or to comply with administrative regulations having mandatory effect. Similarly, retroactive adjustments have been permitted where administrative error has deprived an employee of a right granted by statute or regulation. See 50 Comp. Gen. 850 (1971), 54 Comp. Gen. 263 (1974). On the record it cannot be said that an administrative error as defined above occurred in establishing the date of the promotions.

Accordingly, the general rule that promotions may not be made retroactively effective is for application.

E.F. KELLER

Deputy

Comptroller General
of the United States