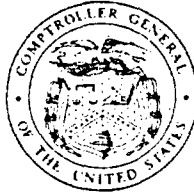


DECISION



61541
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

97982

FILE:

B-184773

DATE:

SEP 23 1976

MATTER OF:

Brenda T. Williams - Retroactive
Correction of Appointment Action

DIGEST:

Cost of Living Council employee had reemployment rights at HEW. Where records show that employee was to be transferred without a break in service, appointment papers erroneously reflecting a break in service may be administratively corrected.

This matter concerns the question as to whether the Department of Health, Education, and Welfare has authority to effect a retroactive correction of an appointment action in the case of Miss Brenda T. Williams, an employee of the National Institute of Education.

Miss Williams served under a career appointment in the competitive service with the Office of Economic Opportunity until February 8, 1973, when she transferred, with reemployment rights, to the Cost of Living Council. She was separated from the Council effective May 5, 1973, and was given a temporary appointment by the Office of the Secretary, Health, Education, and Welfare, effective May 7, 1973, and for a period not to exceed July 1, 1973, after extension. The record shows that Miss Williams' temporary appointment in the Office of the Secretary was terminated July 1, 1973. The record also shows that on July 2, 1973, she was given an excepted appointment not to exceed October 1, 1973, with the National Institute of Education, Health, Education, and Welfare, which culminated in a conversion to a reinstatement.

An inspection of Miss Williams' employment record by the Civil Service Commission revealed that the July 2 appointment

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with the National Institute of Education was effected retroactively since the personnel office did not receive the request for her appointment until July 12, 1973.

The circumstances precipitating the action taken in Miss Williams' entry on duty and proposed corrective action are reported by the Assistant Secretary for Administration and Management as follows:

" * * * A review of the circumstances which caused the personnel office to backdate the action has led us to conclude that the official who authorized the retroactive appointment did so to correct what he believed to be an error on the part of the Department in failing to coordinate the effective dates of her separation from the Office of the Secretary and her appointment by the National Institute of Education. She had understood she was being employed by the National Institute of Education upon termination of her Office of the Secretary appointment, and it is not clear why the request for her National Institute of Education appointment was not initiated on an earlier date. Since the retention of her benefits depended on continuity of service, the personnel office thought an injustice would be done to the employee if the two weeks delay in processing the National Institute of Education appointment resulted in a service break. Accordingly, Miss Williams' appointment in the National Institute of Education was made effective July 2, 1973, and she was granted annual leave to cover the two weeks that elapsed before her appointment papers were processed on July 12.

"To correct the situation at this time to show a separation on July 1 and a reappointment on July 12 would require extensive and

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costly adjustments in pay and leave records. We think it would be preferable from the government's standpoint not to require such a correction. Instead we propose to (1) correct the appointment with the Office of the Secretary to show a temporary appointment not to exceed 90 days based on Miss Williams' eligibility for reinstatement; (2) cancel the separation action that was effective July 1, 1973; and (3) correct the appointment with the National Institute of Education to show an effective date of July 14, 1973. In FPM Chapter 715, Subchapter 1, the Civil Service Commission authorizes correction of a separation action in a transfer or appointment to another Federal agency to make it effective on the day before the transfer or appointment was actually effected. This authorization was considered necessary as a protection for employees in cases where agencies fail to coordinate separation and appointment dates.
* * *

As a general rule a personnel action may not be made retroactive so as to increase the right of an employee to compensation. See 40 Comp. Gen. 207 (1960). We have made exceptions to this rule when through administrative or clerical error a personnel action was not effected as originally intended, where nondiscretionary administrative regulations or policies have not been carried out, or where an administrative error has deprived the employee of a right granted by a statute or regulation. See B-172077, April 7, 1971; B-168715, January 22, 1970. In the instant case the Assistant Secretary states that Miss Williams was erroneously given a special needs appointment effective May 7, 1973, whereas she should have received a temporary appointment under Civil Service Regulation 316.402(b)(1) since she had reinstatement rights.

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We have also adhered to the rule that an otherwise accomplished separation may be rescinded if it is not in conformance with established agency policy or regulations or if it does not conform with the intent of the parties. B-180870, August 27, 1974. In the present case the record indicates that Miss Williams was to be employed by the National Institute of Education without a break in service.

In view of the above we have no objection to HEW effecting corrective action in the proposed manner.

R.F.KELLER

(Deputy)

Comptroller General
of the United States