

S. Feinstein  
P.L.I

**DECISION**



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

9148

FILE: B-192365

DATE: February 14, 1979

MATTER OF: *Personal name*  
Carolyn Whitlock - Retroactive Quality Step Increase

*Entitlement to*

**DIGEST:** ACTION erroneously filed a supervisor's insufficiently documented recommendation of a Quality Step Increase (QSI) for an employee thus causing a delay in the granting of the QSI. Retroactive granting of the QSI may not be made since Action had discretion to grant it and employee had no vested right to it at a particular time under statute or agency regulation.

This action concerns a request from the Director of Personnel, Action, for an official ruling as to whether Action may retroactively grant a Quality Step Increase (QSI) to Carolyn Whitlock, the State Program Director in Action's New York Regional Office.

Ms. Whitlock was recommended for a QSI on her performance evaluation which was submitted in December 1976. Her supervisor, used an obsolete rating form. Action personnel accepted and filed the form in her official personnel folder insufficiently documented. No follow-up was done to obtain the appropriate documentation for the QSI which would have required the Office Head and the Director of Personnel's signatures. Later her supervisor prepared the correct documentation and necessary approvals were obtained. Action does not wish to penalize Ms. Whitlock for the failure of its personnel to correctly complete her promotion package. However, while Action believes its delay in processing the QSI was unjustified or unwarranted personnel action under the Back Pay Act of 1966, 5 U.S.C. (1976), it is uncertain as to whether it may grant Ms. Whitlock a QSI with backpay for the retroactive period.

The awards statute and implementing regulations vest discretion in agencies to make awards and their determinations will not be upset except for a clear showing of abuse of discretion. Shaller v. U.S., 202 Ct. Cl. 571 (1973), cert. denied 414 U.S. 1092. We believe the same principle applies to the awarding of QSI under 5 U.S.C. 5336. Thus, an agency has discretion to approve or disapprove a QSI. See John H. Brown, 56 Comp. Gen. 57 (1976).

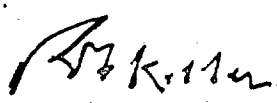
~~003630~~

*dec*

B-192365

We have long held that the granting of promotions is a discretionary matter within the province of the administration of the agency involved, 54 Comp. Gen. 263 (1974). Also, the effective date of a change in salary resulting from administrative action is the date action is taken by the administrative officer vested with necessary authority or a subsequent date specifically fixed by him. 21 Comp. Gen. 95 (1941); B-186649, January 3, 1977. As a general rule, retroactive promotions are not sanctioned by our Office. 33 Comp. Gen. 140 (1953). In addition an administrative change in salary may not be made retroactively effective in the absence of specific statutory authority to do so. B-186649, supra. However, where an administrative or clerical error prevented a personnel action from taking effect as originally intended, deprived an employee of a right granted by statute or regulation, or resulted in the failure to grant a nondiscretionary administrative regulation or policy, we have held that the promotion or corrective action with backpay can be granted retroactively since the agency error constituted an unjustified or unwarranted personnel action and was compensable under the Back Pay Act, 5 U.S.C. 5596. 54 Comp. Gen. 69 (1974); 55 Comp. Gen. 42 (1975); B-186916, April 25, 1977.

In this case Ms. Whitlock did not have a vested right pursuant to statute or agency regulation to a QSI until the appropriate Action officials approved the recommendation and, therefore, it cannot be said that she underwent an unjustified or unwarranted personnel action because her promotion was delayed beyond the date when she first became eligible for the QSI. B-186649, supra. Accordingly, the QSI may not be granted retroactively.

  
Deputy Comptroller General  
of the United States