

DECISION



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

FILE: B-208043

DATE: January 18, 1983

MATTER OF: Retroactive Promotions of Enlisted Members

DIGEST: Since the service Secretaries have no statutory authority to retroactively promote enlisted members, retroactive payment of pay and allowances is not authorized on such a basis. However, under 10 U.S.C. § 1552, the service Secretaries, when acting through boards of civilians, may correct any military record of their department, when they consider it necessary to correct an error or remove an injustice, including correcting retroactively an enlisted member's promotion date. Such a correction is effective for retroactive payment of pay and allowances.

The Acting Assistant Secretary of the Army (Installations, Logistics and Financial Management), has requested an advance decision whether the service Secretaries may retroactively promote an enlisted member. The service Secretaries have no authority to promote enlisted members retroactively other than under the record correction power conferred on them by 10 U.S.C. § 1552. The request for decision was forwarded by the Department of Defense Military Pay and Allowance Committee and assigned Submission Number SS-A-1398.

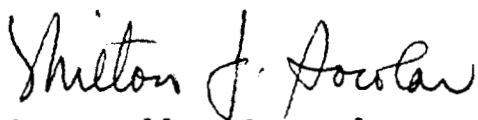
The submission indicates that current regulations do not provide retroactive entitlement to increased pay and allowances for retroactive promotions of enlisted members including where unavoidable administrative errors or delays in promotions occur through no fault of the enlisted member. The enlisted member has only one method by which to collect backpay and allowances; that is, to submit an application pursuant to 10 U.S.C. § 1552 to his service's Board for Correction of Military Records. The submission states that this is a lengthy and complicated process. Thus, we are asked whether the service Secretaries may retroactively promote an enlisted member.

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We have held generally that, in the absence of a statute providing otherwise, military promotions are not effective for pay purposes until made and that retroactive orders are without effect to authorize payment of pay and allowances of the higher grade until the date of the order. See 31 Comp. Gen. 118 (1951); B-145773, July 25, 1961; and 50 Comp. Gen. 125 (1970). Promotions in pay grade of enlisted members are made under the service Secretaries' authority found in 37 U.S.C. § 201(f) which provides that, for the purpose of computing their basic pay, enlisted members shall be distributed by the Secretary concerned in the various enlisted pay grades set forth in 37 U.S.C. § 203. It is well settled that a statute granting authority to appoint to office may not be taken as authority to make a retroactive appointment unless it clearly appears from the language of the statute that such was the intention of Congress. 26 Comp. Gen. 475, 477 (1947). Cf. 46 Comp. Gen. 121 (1966).

Neither 37 U.S.C. § 201(f) nor any other statute of which we are aware provides for the retroactive promotion of enlisted members by the service Secretaries without use of the military records correction process under 10 U.S.C. § 1552. Without a statute that specifically empowers the service Secretaries to retroactively promote enlisted members, there is no authority for making payment from the earlier date.

It appears that the types of cases referred to in the submission in which promotions are delayed are among the types of cases for which the correction board process was established. While that procedure may be time consuming, administrative actions probably could alleviate some delay and processing burden by establishing simplified procedures in appropriate situations. In any case, as indicated, there is no authority outside the correction of record authority to permit retroactive promotions in the circumstances.


for Comptroller General
of the United States