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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-198149 (DAS)

April 11, 1980

Colonel David B. Germann, USAF
DPSC - AP
Headquarters, Defense Personnel
Support Center, DLA
2800 South 20th Street
Philadelphia, PA 19101

Dear Col. Germann:

We refer to your letter dated March 10, 1980, concerning the request of Ms. Jessie A. Davis for a retroactive promotion from December 23, 1979, to January 20, 1980. She was a GS-07 contract specialist and was recommended for promotion along with a co-worker on December 6, 1979. However, the supervisor failed to sign one document necessary for her promotion and, as a result, her co-worker was promoted two pay periods before Ms. Davis. The supervisor agrees that she should have been promoted earlier and that the mistake was not her fault.

The following information is provided in lieu of a formal decision. Our office has issued decisions in situations similar to the one you describe. In one case an employee's career ladder promotion was delayed because the original promotion request was lost in the mail. The employee took the case to arbitration and the arbitrator ruled in favor of the employee. However, we ruled that the agency could not implement the arbitration award because the original promotion request was lost prior to its approval by the authorized official and the delay in processing the promotion did not support a retroactive promotion. Janice Levy, B-190408, December 21, 1977 (copy enclosed).

The general rule, in cases involving approval of promotions, is that it is necessary that the official having delegated authority to approve the promotion has done so. Thus, a distinction is drawn between errors that occur prior to approval of the promotion by the properly authorized official and those that occur after such approval but before the acts necessary to effective promotion have been fully carried out. The rationale for this distinction is that the individual



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with authority to approve promotion requests also has the authority not to approve any such request, unless his exercise of authority is constrained by statute, administrative policy or regulation. Where the error or omission occurs before he exercises that discretion, administrative intent to promote at any particular time cannot be established. After the authorizing office has exercised his authority by approving the promotion, all that remains to effectuate that promotion is a series of ministerial acts. In that case, since administrative intent to promote is established, retroactive promotion as a remedy is appropriate. 58 Comp. Gen. 59 (1978) (copy enclosed).

In Ms. Davis' case it appears that the supervisor's error occurred prior to the approval of the promotion by the properly authorized official and, therefore, she would not be eligible for a retroactive promotion under the general rule stated above. If, however, after reading the foregoing, Ms. Davis wishes to pursue this matter, she may file a claim with our Office, addressed to:

Claims Group, FGMSD
U.S. General Accounting Office
Washington, D.C. 20548.

Sincerely,

Robert L. Higgins
Robert L. Higgins
Assistant General Counsel

Enclosures