

**GAO**

United States General Accounting Office  
Washington, DC 20548

Office of  
General Counsel

In Reply  
Refer to: B-201927 (VBC)

February 23, 1981

Arnold S. Battise, Esquire  
Assistant Regional Attorney  
Office of the General Counsel  
Department of Health and Human  
Services, Region VI  
1200 Main Tower Building  
Dallas, Texas 75202

Dear Mr. Battise:

This refers to your letter of January 22, 1981, in which you ask for our opinion on the propriety of granting a retroactive temporary promotion in the circumstances stated in your letter.

As I informed you by telephone on January 21, 1981, we will provide you with the general rules relating to retroactive promotions and with copies of prior decisions in order to assist you in this matter.

As a general rule, a promotion action may not be made retroactive so as to increase an employee's right to compensation. The exceptions to this rule, and the cases where backpay may be awarded, are instances in which an administrative or clerical error:

- (1) prevented a personnel action from being effected as originally intended,
- (2) resulted in a nondiscretionary administrative regulation or policy not being carried out, or
- (3) deprived the employee of a right granted by statute or regulations.



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See 58 Comp. Gen. 51 (1978); B-190408, December 21, 1977, and B-193918, September 21, 1979, copies enclosed.

In cases involving approval of retroactive promotions on the ground of administrative or clerical error, it is necessary that the official having delegated authority to approve the promotion has done so. Thus, a distinction is drawn between those errors that occur prior to approval of the promotion by the properly authorized official and those that occur after such approval. The rationale for this distinction is that the individual with authority to approve promotion requests also has the authority not to approve any such request, unless his exercise of disapproval 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. However, after the authorizing official has approved 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 for failure to accomplish those ministerial acts is appropriate. See 58 Comp. Gen. 59 (1978), copy enclosed, and B-190408, December 21, 1977, supra.


As noted above, however, where there is a binding policy, regulation or statutory right to a promotion at a given time, the failure of the approving official to act at the appropriate time is not a bar to a retroactive promotion. See B-186916, April 25, 1977, copy enclosed.

From your statement of the facts, it does not appear that the Regional Personnel Officer had exercised his approval on or before April 20, 1980. Therefore, under the rules cited above, it does not appear that the promotion in question could be made retroactive

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to that date. If, however, the employee wishes to pursue this matter, she may file a claim with GAO under the provisions of 4 C.F.R. Part 31.

Sincerely yours,

  
V. Bruce Goddard  
Attorney-Adviser

Enclosures