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DECISION



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

FILE: B-217831

DATE: October 23, 1985

MATTER OF: Rita H. Rains - Retroactive Promotion and Backpay

DIGEST:

Agency regional personnel office relied upon employee's part-time employment status rather than the actual number of hours worked which equaled an essentially full-time schedule during previous year, thereby causing delay in employee's promotion. In the absence of a nondiscretionary agency policy, the effective date of a promotion may not precede the date action is taken by an official authorized to approve the promotion. The delays here occurred before that official had the opportunity to act. Further, failure to promote the employee at an earlier date did not violate a nondiscretionary agency policy. Therefore, the employee is not entitled to retroactive promotion and backpay.

We hold in this decision that an employee of the Social Security Administration, Department of Health and Human Services, is not entitled to a retroactive promotion and backpay from grade GS-9 to GS-10. The background and our reasons for so deciding are set forth below.^{1/}

BACKGROUND

Ms. Rains was employed by the Social Security Administration's Branch Office in Clinton, Oklahoma. On March 28, 1980, the Branch Manager of the Clinton Office submitted a request for Ms. Rains' promotion from Claims Representative, GS-9 to GS-10, to be effective April 20, 1980. The Regional Personnel Office in Dallas, Texas, determined that the promotion could not be made effective

^{1/} The decision results from the appeal of Ms. Rita H. Rains from the decision of our Claims Group, on claim Z-2831233, issued September 9, 1981, which denied her claim for a retroactive promotion.

on that date since her Official Personnel Record reflected that she had been on a part-time tour of duty of 35 hours per week since December 3, 1978, through the date her promotion recommendation was submitted to the Regional Office for approval. Since the 1-year experience requirement for promotion applied by the Regional Personnel Office is prorated for part-time employees according to the percentage of a full-time work schedule worked, this translated into a promotion eligibility date of June 1, 1980. The Regional Personnel Officer reports that the documents received by his office on April 3, 1980, from the Branch Manager and the employee's personnel records in his possession contained no indication that Ms. Rains was working other than a 35-hour per week schedule.

When the Branch Manager in Clinton became aware that the actual number of hours which Ms. Rains had worked during the previous year could result in an earlier effective date than the June 1 date proposed by the Regional Personnel Officer, he notified the Regional Office by memorandum dated May 1, 1980, and received May 5, 1980, that Ms. Rains had been in a duty status a total of 2,047 hours during the 26 pay periods ending April 19, 1980. This additional information allowed the Regional Personnel Officer to approve Ms. Rains promotion effective May 18, 1980, the beginning of the first pay period after receipt of the actual tour of duty information. Had this information been in the possession of the Regional Personnel Officer prior to April 20, 1980, Ms. Rains' promotion would have been made effective on this earlier date. It is for this reason that Ms. Rains requests a retroactive promotion with backpay for the difference between her pay as a grade GS-9, step 1, and as a grade GS-10, step 1, for the period April 20, 1980, to May 18, 1980.

DECISION

An employee of the Federal Government is entitled only to the salary of his or her appointed position regardless of the duties actually performed. Dianish v. United States, 183 Ct. Cl. 702 (1968); Thomas Davis, B-189673, February 23, 1978. Also, the granting of promotions is a discretionary matter primarily within the province of the administrative agency concerned. 54 Comp. Gen. 263 (1974). The effective date of a change in salary resulting from a promotion is the date action is taken by the administrative officer vested with promotion

approval authority, or a subsequent date specifically fixed by him. 21 Comp. Gen. 95 (1941). However, backpay may be awarded under the authority of 5 U.S.C. § 5596 (1982) as a remedy where unjustified and unwarranted personnel actions affecting pay or allowances have been taken.

Our decisions have held that, as a general rule, a personnel action may not be made retroactive so as to increase the rights of an employee to compensation. We have made exceptions to this rule where administrative or clerical error (1) prevented an approved personnel action from being effected as originally intended, (2) violated nondiscretionary administrative regulations or policies, or (3) deprived the employee of a right granted by statute or regulation. See Douglas C. Butler, 58 Comp. Gen. 51 (1978), and decisions cited therein.

As we stated in Butler, supra, with respect to delays or omissions in the processing of promotion requests, where the delay or omission occurs before the authorized official has exercised his discretionary authority to approve the promotion, administrative intent to promote at a particular time other than the date of the approval cannot be established. On the other hand, administrative or clerical errors which delay or prevent a promotion from occurring after such approval do come within the exceptions outlined above so as to permit a retroactive promotion. John Cahill, 58 Comp. Gen. 59 (1978); Janice Levy, B-190408, December 21, 1977.

In our decision, Esther Prosser, B-194989, August 8, 1979, we considered a claim for retroactive promotion where the administrative delay occurred before the promotion request documents were forwarded to the authorized official for approval. Citing to our analysis in Butler, we concluded that the delay in processing the claimant's promotion prior to final approval did not constitute administrative error so as to permit a retroactive promotion, since there was no nondiscretionary regulation or policy otherwise requiring the promotion, or the timing thereof.

In support of her request, Ms. Rains points to procedures outlined in the Social Security Administration Guide for Supervisors, which cites to Chapter III, SSA Guide 1-1. Paragraph f of SSA Guide 1-1 provides in pertinent part as follows:

"All promotions within a career ladder will be effective at the beginning of the first pay period after the employee meets the required qualification and time-in-grade requirements provided that the supervisor has certified that the employee meets the acceptable standard for promotion to the next grade in the ladder as defined in the career ladder plan."

However, this regulation is subtitled "SSA Headquarters Promotion Plan" and we have been advised by the agency that it has no applicability to other than headquarters employees.

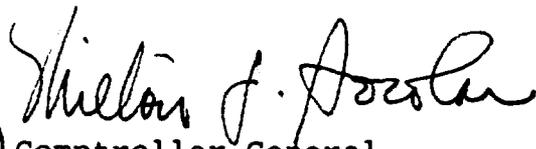
The regulations in effect at the time of Ms. Rains' promotion which were applicable to regional, district, and branch employees are contained in SSA Personnel Guide for Supervisors, Chapter III, SSA Guide 3-3 ("SSA Career Ladder Promotions"). Paragraph II.B. of this chapter provides that " * * * promotions within career ladders are neither automatic nor mandatory. There is no guarantee that an employee in a career ladder will be promoted, nor a commitment that a promotion will be made at any set time." Additionally, paragraph III.B.1. entitled "Basis for Promotion" provides that "[t]ime-in-grade requirements establish the minimum time within which career promotions may be made. They do not, however, constitute a basis for promotion * * *."

We have held that a mistake in evaluating the qualifying experience of an employee for the purpose of a discretionary promotion is not the type of error justifying a retroactive promotion. Maureen Barry, B-189678, December 21, 1977. We have dealt with the same issue where the employee was to be reassigned to a position in another job series at either a higher grade or at the same grade as her previous position, depending upon the evaluation of her qualifying experience. See Barbara W. Scheaffer, B-200717, January 28, 1981, and Melissa T. LeSeur, B-200669, May 6, 1981. In these cases, we

explained that not every error in the processing of personnel actions constitutes an unjustified or unwarranted personnel action for which the Back Pay Act provides a remedy.

The facts on record do not support Ms. Rains' claim that there was an administrative error justifying a retroactive promotion with backpay. Unless an administrative regulation, instruction, or policy states otherwise, a career-ladder promotion is not mandatory, and withholding it is within the discretion of the official authorized to approve the promotion. See 56 Comp. Gen. 1003 (1977), and Janice Levy, B-190408, December 21, 1977. Ms. Rains' case does not fall within any of the exceptions to the general rule against retroactive personnel actions. It is clear that the decision not to promote Ms. Rains on April 20 was intentional, albeit based on incomplete facts, and no administrative or clerical error was made in this regard. Moreover, as the SSA regulation quoted above makes clear, there is nothing to indicate that the promotion of Ms. Rains was nondiscretionary. No statute, regulation, labor-management agreement, or other binding agency directive mandated the promotion of Ms. Rains after a given time had passed.

Accordingly, we find no basis upon which Ms. Rains may be promoted retroactively. Therefore, the denial of her claim by the settlement of September 9, 1981, is sustained.

for 
Comptroller General
of the United States