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**DECISION**



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

**FILE:** B-202688

**DATE:** October 23, 1981

**MATTER OF:** John W. Godwin - Claim for Backpay

- DIGEST:**
1. Employee claims retroactive promotion and accompanying backpay based on belief that he should have received a noncompetitive promotion at the time he became eligible for promotion. In the absence of a non-discretionary agency policy or regulation requiring that the employee be promoted there is no basis to allow a retroactive promotion with accompanying backpay and the claim may not be allowed.
  2. Employee claims a retroactive promotion and backpay on the basis that the duties he performed were those of a higher-grade position. Claim may not be allowed since, generally, an employee is entitled to the salary of the position to which he has been appointed regardless of the duties he may perform.

By letter dated March 16, 1981, Mr. John W. Godwin, an employee of the Department of the Army, has appealed our Claims Group's settlement dated November 3, 1980, which disallowed his claim for a retroactive promotion and backpay for an approximate period of 2-1/2 years ending April 16, 1980. Mr. Godwin's claim is based upon the agency's alleged failure to promote him at the time that he was first eligible for promotion and upon his performance of duties associated with the higher-grade position.

Our Claims Group's disallowance is sustained on the basis that the record does not show the existence of an administrative requirement that he be promoted at a specific time. In the circumstances he is entitled only to the salary of the position to which he had been appointed.

On October 18, 1976, Mr. Godwin was appointed to the position of air conditioning equipment mechanic,

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grade WG-8, at Fort Monroe, Virginia. On April 16, 1980, he was promoted to the position of air conditioning equipment mechanic, grade WG-10. Mr. Godwin has noted that the placement and promotion announcement for the vacant position to which he was appointed provides that subject to satisfactory completion of training and meeting qualification requirements, selected employees may be advanced to grade WG-10 without further competition. Accordingly, he believes that he should have been promoted upon his achieving eligibility for promotion.

Generally, the granting of promotions from grade-to-grade is a discretionary matter primarily within the province of the administrative agency involved. See Tierney v. United States, 168 Ct. Cl. 77 (1964), and Wienberg v. United States, 192 Ct. Cl. 24 (1970). This discretion includes the granting of noncompetitive promotions to individuals in career-ladder positions. See B-178139, June 18, 1973.

Ordinarily an administrative change in salary may not be made retroactively effective in the absence of a statute so providing. 26 Comp. Gen. 706 (1947), and 40 id. 207 (1960). However, we have permitted a retroactive personnel action where clerical or administrative errors occurred that (1) prevented a personnel action from taking effect as originally intended, (2) deprived an employee of a right granted by statute or regulation, or (3) would result in failure to carry out a nondiscretionary administrative regulation or policy if not adjusted retroactively. We have recognized that the above-stated exceptions to the general rule prohibiting retroactively effective personnel actions may constitute "unjustified or unwarranted personnel actions" under the Back Pay Act, 5 U.S.C. § 5596 (1976). Joseph Pompeo et al., B-186916, April 25, 1977, and 55 Comp. Gen. 42 (1975).

Mr. Godwin has not introduced any evidence to establish that his case falls within any of the above exceptions. There is nothing in the file which shows

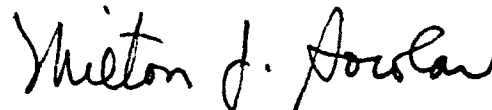
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that there existed a nondiscretionary agency policy or regulation which would have required that he be promoted at a time prior to the effective date of his promotion in April 1980.

Concerning Mr. Godwin's claim based on his alleged performance of a grade WG-10, air conditioning mechanic, the general rule is that an employee is entitled to the salary of the position to which he has been appointed regardless of the duties he may perform. See Coleman v. United States, 100 Ct. Cl. 41 (1943); Dianish v. United States, 183 Ct. Cl. 702 (1968); and Patrick L. Peters, B-189663, November 23, 1977. An employee who is performing duties of a grade level higher than that of the position to which he is appointed is not entitled to the salary of a higher-level position unless and until the position is classified to the higher grade and he is promoted to it. 55 Comp. Gen. 515 (1975).

Finally, we note that the record shows that Mr. Godwin has advised the agency that he believes that the delay in his promotion was due to racial discrimination. The record indicates that an agency investigation concluded that there is no basis to this contention. It is not within the jurisdiction of this Office to investigate or render decisions on claims of discrimination in employment in other agencies of the Government. See Clem H. Gifford, B-193834, June 13, 1979.

Accordingly, the disallowance of Mr. Godwin's claim is sustained.



Acting Comptroller General  
of the United States