

14262 Mr. Agazarian

PLMII

DECISION



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

FILE: B-196638

DATE: July 10, 1980

MATTER OF: Earl H. Carter -- [Claim for ^(Retroactive promotion and) Backpay]

DIGEST:

Social Security Administration employee claims retroactive promotion with backpay alleging agency's improper action in not selecting him for an earlier promotion when he was ranked among the "best qualified" applicants. In addition, he requests a retroactive quality step increase as he alleges that agency officials improperly delayed recommending and approving that award. Since no nondiscretionary policy or regulation is shown that would have required that he be selected for promotion or would require his selection for a quality step increase at a specific time, there is no basis to allow claim.

By letter dated August 4, 1979, Mr. Earl H. Carter, an employee of the Social Security Administration (SSA) has appealed from our Claims Division's August 1, 1979 settlement which disallowed his claim for a retroactive promotion and accompanying backpay for the period from February 27, 1977, to January 1978. In addition, he appeals the Claims Division's disallowance of his claim for a retroactive quality step increase. Upon review the action disallowing his claims is sustained.

The record shows that Mr. Carter applied under agency position vacancy announcements for promotion to the position of Social Insurance Claims Examiner, GS-933-8. He was among those candidates ranked "best-qualified" for selection and alleges that he had the third highest point total of the applicants. The selections were apparently made in February 1977. Mr. Carter was not selected for promotion to these positions and agency officials advised Mr. Carter and his attorney that he was not selected as the recommending official in the selection process was aware that he had received an official reprimand which had been in effect since June 1976. These officials further advised that there was no

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requirement or guarantee that an employee who is ranked among the best qualified candidates be selected for promotion regardless of his ranking on the best qualified list.

Mr. Carter contends that the agency acted improperly in not selecting him for promotion to one of the available positions. He thus has claimed entitlement to a retroactive promotion and backpay for the period from February 27, 1977, to the effective date of his promotion to a grade GS-8 position in January 1978.

The Claims Division disallowed Mr. Carter's claim on the basis that Government employees have no vested right to be promoted at a specific time.

In addition, Mr. Carter has claimed a retroactive quality step increase and accompanying backpay. He alleges that a step increase which he received at an unspecified time should have been awarded at an earlier date. He states that the award should have been initiated for processing at the time of his superior performance appraisal in September 1976.

The Claims Division also disallowed the claim for a retroactive step increase.

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), Weinberg v. United States, 192 Ct. Cl. 24 (1970). Also, the approval of a quality step increase pursuant to 5 U.S.C. 5336 (1976) is generally discretionary with the agency. Matter of Carolyn Whitlock, 58 Comp. Gen. 290 (1979).

As a general rule an administrative change in salary may not be retroactively effective in the absence of a statute so providing. 26 Comp. Gen. 706 (1947). However, we have permitted a retroactive

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personnel action where clerical or administrative errors occurred that prevented a personnel action from taking effect as originally intended, deprived an employee of a right granted by statute or regulation, or 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). Matter of Joseph Pompeo, et al. B-186916, April 25, 1977, and 55 Comp. Gen. 42 (1975).

Mr. Carter 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 that there existed a nondiscretionary agency policy or regulation which would have required that he have been selected for promotion under the agency position vacancy announcements in February 1977 or at any other time prior to the effective date of his promotion in January 1978. In addition, while he has provided copies of portions of the Social Security Administration's Personnel Guide for Supervisors, High Quality Increase and Special Achievement Awards, a review thereof does not show any provision which would have required that Mr. Carter be recommended and approved for a quality step increase at a specified time. In Mr. Carter's case both the granting of the promotion and the awarding of the step increase were matters within the discretion of the agency.

In view of the above, we cannot find that there has been an unjustified or unwarranted personnel action which would allow either a retroactive promotion action or a

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retroactive quality step increase with accompanying
backpay. Accordingly, the disallowance of Mr. Carter's
claim is sustained.

Milton J. Fowler

For The Comptroller General
of the United States

Memorandum

July 10, 1980

TO : Associate Director, FGMSD - Claims Group (Room 5858)

Milton J. Fowler
FROM : Comptroller General
For The

SUBJECT: Earl H. Carter - Claim for Retroactive Promotion and
Quality Step Increase - B-196638-O.M.

Returned herewith is your file Z-2814400. By our decision of today B-196638, copy attached, we have sustained the disallowance of Mr. Carter's claims.

Attachments