

Date: January 15, 2003

Claimant: [name]

File Number: 02-0027

OPM Contact: Deborah Y. McKissick

The claimant is employed with the Department of the Army. The claimant requests that the agency process her promotion retroactively. The Office of Personnel Management (OPM) received the compensation claim on May 23, 2002, and the agency administrative report on November 25, 2002. For the reasons discussed herein, the claim is denied.

The claimant requests a retroactive promotion based on her belief that administrative errors occurred at the agency's Civilian Personnel Advisory Center (CPAC) during the processing of her promotion. The claimant believes her competitive promotion should have been processed effective November 18, 2001, instead of January 13, 2002, because an administrative oversight occurred. According to the documents that the claimant submitted to OPM, she was selected for and offered a Management Analyst, GS-343-7, position (developmental to the GS-9 grade level) on October 14, 2001. The claimant stated that the Civilian Personnel Operations Center (CPOC) informed the claimant that her promotion would be effective on November 18, 2001. When the claimant received her next two leave and earning statements following November 18, 2001, she informed the CPAC that the promotion was not effected. On January 5, 2002, CPOC received a promotion package from Saudi-CPAC (SA-CPAC). The claimant's promotion became effective on January 13, 2002, ten weeks after November 18, 2001.

The administrative report stated that "the effective date of a civilian personnel action is normally set to occur on or after the date the action is formally approved by an authorized approving official." CPOC explained that the approving official for the serviced command is the Director of the regional CPOC. CPOC stated that the claimant's promotion action was processed on the earliest date possible after CPOC received the selection information from the SA-CPAC on January 5, 2002. CPOC stated that a review of the recruitment files did not uncover any administrative error after the appointing officer received the promotion package. CPOC also noted that the claimant could not be promoted earlier than January 13, 2002, because CPOC did not have any record of receiving any information from the SA-CPAC prior to January 5, 2002.

There is no administrative regulation or policy provision that requires a promotion be enacted within a specific time. A promotion may not be retroactive for the purpose of increasing an employee's right to compensation. There are exceptions to this rule, where

back pay may be awarded for failure to promote an employee earlier. The exceptions include instances when an administrative or clerical error prevents a personnel action from being effected as originally intended, results in a nondiscretionary administrative regulation or policy not being carried out, or deprives an employee of a right granted by statute or regulations. *See* 58 Comp. Gen. 51 (1978); B-190408, December 21, 1977; and B-193918, September 21, 1979.

However, the official with delegated authority to approve the promotion must approve the promotion before the administrative or clerical error occurs. According to CPOC, the director of the CPOC is the agency's "authorized approving official." Because promotion appointment authority is discretionary with the agency official granted such authority, an employee is not entitled to a promotion until such appointment authority has been exercised. Inasmuch as the official who was delegated authority to approve such promotions had not done so prior to November 18, 2001, there is no statutory authority under which a retroactive promotion and back pay can be awarded. *B-183969, B-183985, July 12, 1975.*

OPM does not conduct investigations or adversary hearings in adjudicating claims, but relies on the written record presented by the parties. *See, Frank A. Barone, B-229439, May 25, 1998.* Where the agency's factual determination is reasonable, we will not substitute our judgment for that of the agency. *See e.g., Jimmy D. Brewer, B-205452, March 15, 1982, as cited in Philip M. Brey, supra.* The claimant's promotion action was not approved by the agency's authorized approving official prior to January 5, 2002. Therefore, the claimant's promotion cannot be made effective on November 18, 2001. The claim is denied.

This settlement is final. No further administrative review is available within OPM. Nothing in this settlement limits the employee's right to bring an action in an appropriate United States Court.