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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Marianna Mehutcs

**File:** B-261592

**Date:** November 13, 1995

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## DIGEST

Promotion of an employee in a trainee position was delayed because of a computer crash before the promotion request reached the authorized official. Where delay precedes the authorized official's approval, no administrative intent to promote can be established so as to support a claim for retroactive promotion. The cause of the delay is less important than the timing of the delay.

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## DECISION

The Director, Human Resources Directorate, Defense Contract Management District South (DCMDS), Defense Logistics Agency, Marietta, Georgia, requests approval to retroactively promote Ms. Marianna Mehutcs, a contract specialist trainee, in Norfolk, Virginia.

## BACKGROUND

Ms. Mehutcs was competitively selected as a contract specialist trainee, GS-1102-05, with a target position of GS-1102-11. Her reassignment was effective on December 5, 1993. In order to be eligible for a noncompetitive promotion as a trainee, she was required to complete specific training, have 1 year of specialized experience at the next lower grade, and be recommended for promotion. On October 28, 1994, Major Howard the head of the Norfolk office, certified that Ms. Mehutcs had met these requirements. He submitted the Personnel Action Request System Form (PARS 52) to promote Ms. Mehutcs to the GS-7 level effective December 4, 1994. Mr. O'Connell, the Deputy for DCMAO Baltimore, approved the PARS 52. In November 1994, the automated system at DCMDS crashed and all the PARS 52 were lost. The staffing specialist in Atlanta authorized to approve promotions never received the PARS 52 for Ms. Mehutcs.

Major Howard's supervisor was notified of the crash and the need to resubmit requests that might have been lost in the crash. This message, however, was not forwarded to the Norfolk office. Major Howard was not aware of the loss until early January 1995 when Ms. Mehutcs informed him that her salary did not change to reflect her promotion. Upon checking, Major Howard was told to submit a new PARS 52, which he promptly did. Ms. Mehutcs was promoted to the GS-7 level effective February 12, 1995.

Under the unique circumstances of this situation, the Director, DCMDS, argues:

"In this situation in our highly computerized world, we believe that when a manager submits the paperwork five weeks in advance, certifying that all conditions are met, and the computerized PARS 52 is lost due to a system problem, the employee should not pay the penalty for the remainder of her career. Therefore, we request that you strongly consider the unique circumstances of this situation and approve a retroactive promotion from 12/14/94, to the GS-1102-07 for Ms. Mehutcs."

#### ANALYSIS AND CONCLUSIONS

Employees have no vested right to be promoted at any specific time. The effective date of salary changes resulting from administrative action exclusively is the date the action is taken by the administrative officer vested with the proper authority, or a subsequent date specifically fixed. 21 Comp. Gen. 95 (1941). See also 5 C.F.R. § 511.701(a) (1995). As a general rule, a promotion action may not be made retroactive so as to increase an employee's right to compensation. 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 affected 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. 58 Comp. Gen. 51 (1978). The second and third exceptions are not applicable to this case. The agency argues that the first exception be expanded to include the instance when computer failure results in the delay.

In cases involving approval of retroactive promotions on the ground of administrative or clerical error, the authorizing official must approve the promotion. 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 but before the acts necessary to effectuate the promotion have been fully carried out. The rationale for drawing 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. After the authorizing official has exercised his authority by approving 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. 58 Comp. Gen. 59, 61 (1978); Janice Levy, B-190408, Dec. 21, 1977.

In determining if an exception can be made and a retroactive promotion granted, the cause of the delay is less important than when the delay occurs. In Janice Levy, supra, we ruled that where an employee's career-ladder promotion was delayed because the original promotion request was lost in the mails, the agency could not award a retroactive promotion with backpay. Since the original promotion request was lost prior to its approval by the properly authorized official, the delay in processing the promotion did not constitute administrative error of a nature that would support retroactive promotion.

In the present case, the appropriate supervisors approved the PARS 52 before the computer crash; however, the staffing specialist in Atlanta is the authorizing official. This person did not approve the promotion before the crash. Since the delay occurred before the authorized official approved Ms. Mehutcs's promotion, no authority exists to permit a retroactive promotion. Further delay after the computer crash resulted from the Baltimore office not notifying Ms. Mehutcs's office in a timely manner of the need to resubmit the PARS 52. This delay does not constitute administrative error such as would warrant a retroactive promotion.

/s/Seymour Efros  
for Robert P. Murphy  
General Counsel