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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

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In Reply
Refer to: B-199959 (RCP)

OCT 20 1980

W. A. Crane, CDR, JAGC, USN
Acting Deputy Assistant Judge
Advocate General (Claims)
Office of the Judge Advocate General
Department of the Navy
200 Stovall Street
Alexandria, Virginia 22332

Dear Commander Crane:

We refer to your letter dated July 24, 1980, reference JAG:153:RJS:alb, in which you present a question in connection with the claim of Mr. Norman R. Snyder for the loss of his household goods and personal property incident to his evacuation from Vietnam in April 1975. Specifically you have asked this Office to determine whether, on the basis of information submitted with your letter, Mr. Snyder was in fact a civilian employee of the Navy at the time of his alleged property loss in April 1975.

In accordance with section 30.1(a) of title 4, Code of Federal Regulations the claims settlement authority of the General Accounting Office does not extend to those claims which are under the exclusive jurisdiction of administrative agencies pursuant to specific statutory authority. The Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. § 241(a)(2) (1976), authorizes the Secretary of Defense or his designee to pay claims up to \$15,000 for damages to or loss of, personal property incident to an employee's service. Thus our Office has no jurisdiction to consider the claims of employees of other agencies for the loss of, or damage to, personal property under that Act and there is no duty



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upon the certifying officer to question such determination or to request an advance decision from our Office. See for example Carl E. Hinrichs, B-187913, February 9, 1977 (copy enclosed) citing 31 U.S.C. §§ 240-243, as amended. Further, while this Office has final authority under 5 C.F.R. § 5.3(c)(1980) to withhold compensation of individuals who are improperly employed, determinations regarding an individual's appointment, competitive status and competitive service are within the primary jurisdiction of the Office of Personnel Management. See 5 C.F.R. § 212.102 (1980).

In view of these findings we are not rendering a decision in response to your letter. However, on the basis of the information provided by you, we hope the following observations will be of assistance to you.

Your letter indicates that Mr. Snyder began work for the Navy in the Defense Attache Office, Security Assistance Division, in Saigon, Vietnam, on November 25, 1974, under a limited appointment. The Standard Form 50, "Notification of Personnel Action" executed in connection with Mr. Snyder's limited appointment of November 25, 1974, provided that the appointment was not to exceed November 20, 1975, and further pertinent "remarks" indicated that Mr. Snyder was a "local hire" and that he was "ineligible for differentials and allowances" and had "no return rights." However, by Standard Form 50 dated and effective February 16, 1975, it appears that Mr. Snyder was given a career conditional appointment to a competitive position as a "computer systems analyst" (position description number 6739) with none of the limitations noted above in connection with the earlier appointment annotated on the new personnel action. Further, the February 16, 1975, personnel action cites 5 C.F.R. § 330.201 (Appointment From Reemployment Priority List) as the authority under which the personnel action was taken.

One of the basic requisites which must be fulfilled for entitlement to compensation as a civilian employee of the United States is being appointed. An appointment is the act of employing a person for

assignment to an authorized position or office in accordance with applicable laws, rules, and regulations. The appointment is made by the head of the department or agency involved or by some other officer or employee of the agency to whom such authority has been delegated under 5 U.S.C. § 302(b). The appointment is evidenced by an official personnel action (Standard Form 50 - Notification of Personnel Action) which should include a citation to the authority under which the appointment is made, the title or designation of the office or position to which appointed, the grade, rate of compensation and tenure of appointment. See generally the laws relating to the appointment of employees now codified primarily in chapters 21, 29, 31 and 33 of title 5, United States Code; and see 17 Comp. Gen. 578 (1938), 18 id. 223 (1938), id. 796 (1939), and 19 id. 160 (1939).

With this understanding in mind, and while not interposing our judgement for that of the Office of Personnel Management in regard to the procedural rectitude of Mr. Snyder's appointing action, it would appear to us that the official personnel action of February 16, 1975, had the effect of making Mr. Snyder an employee within the meaning of section 2105 of title 5, United States Code, effective as of that same stipulated date. Thus it is our informal estimation, based on the information contained in your submission, that Mr. Snyder was appointed for the purpose of employment with the Navy on and after February 16, 1975.

In addition we are enclosing a copy of our decision Gerald E. Kosh, B-195743, September 17, 1979, in the belief that it may be of assistance to you as generally applicable to the circumstances of Mr. Snyder's case.

Sincerely yours,

Robert L. Higgins
Assistant General Counsel

Enclosures