

**DECISION**



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

FILE: B-184237

DATE: NOV 28 1975

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MATTER OF: Jack S. Groff - Status as Government employee

**DIGEST:**

Where Government record of personnel action indicates employee was appointed by duly authorized Government official, officer is presumed to properly discharge official duty and record of appointment is official Government record and presumption of regularity attaches so that absent clear evidence of error, employee may be presumed to have been properly appointed to position in compliance with law then in effect.

This case arises upon the request of Mr. Robert E. Hampton, Chairman of the Civil Service Commission, who seeks an advance decision as to the status of Mr. Jack S. Groff for service credit, retirement contributions, pay rate, and leave accrual. Mr. Groff was competitively selected under local merit promotion procedures on August 15, 1974, for a position as Computer Technician, GS-335-09, with the Military Traffic Management Command, Department of the Army (MTMC).

It appears that Mr. Groff was employed by the Central Intelligence Agency (CIA) until June, 1967, at which time he transferred to the Post Office Department (now Postal Service) as a Computer Operator, Postal Field Service (PFS)-9. Thereafter, in November 1967, he was promoted to PFS-10. Also, Mr. Groff has served as a Computer Technician, GS-335-8, in the employ of the Drug Enforcement Administration.

At the time the present appointment was made, a question arose whether Mr. Groff had theretofore been selected from a competitive register. As Mr. Hampton explained in his letter to this Office,

"\* \* \* when Mr. Groff was selected as a Computer Operator, PFS-9, the Civil Service Commission had not yet taken over the examining function for such positions. The Postal Service has no record of the kind of examining procedures it was using to

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fill the positions. Thus, it is impossible to determine whether Mr. Groff could have been examined and appointed through proper procedures for the PFS-9 position in June 1967."

Further, Mr. Hampton notes that when Mr. Groff was promoted to PFS-10 in November 1967, all ranking and certification was done by the Postal Service and that "no uniform rating schedule was developed against which the Civil Service Commission could now determine how Mr. Groff would have scored had he taken the test in 1967." It is stated that the "error" occurred through no fault of Mr. Groff's, but "arose from an administrative oversight."

Nevertheless, in the view of the Civil Service Commission, if Mr. Groff's earlier

"\* \* \* appointment is now considered void ab initio, his service under \* \* \* that appointment would be de facto, and even in the absence of fraud, any unpaid compensation must be withheld, any paid compensation must be refunded to the employing agency, retirement contributions refunded to the employing agency, and service credit denied. If, on the other hand, his appointment was voidable, then the absence of fraud allows for full credit for retirement and other purposes."

The record before us does not affirmatively demonstrate that Mr. Groff's 1967 appointment was improper. To be sure, the records of the Civil Service Commission indicate that in 1970 Mr. Groff was found to be ineligible for the position of Computer Technician, grade GS-5, for lack of appropriate experience. As Mr. Hampton's letter states, "this does not prove that he would have been ineligible for Computer Operator positions." The most that appears is that the available record fails to affirmatively establish that the 1967 appointment was based on a competitive selection process. It does not demonstrate that it was not.

Thus, it may be concluded that the 1967 appointment (manifested, e.g. by a formal Personnel Action) is justifiable and legally sufficient unless rebutted by substantial evidence that it was not. It is stated that Mr. Groff was appointed to the PFS-9

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position prior to the date the Commission assumed the examining function for such positions, the determination of his qualifications then being a responsibility of the Post Office Department. While Commission regulations require that agencies retain certain personnel records, we are aware of no principle of law which requires that an employee be held accountable for his employing agency's failure to retain his complete personnel records. Cf. Nordstrom v. United States, 177 Ct. Cl. 818, 824 (1966). We can see no sufficient reason why Mr. Groff should be penalized if the Postal Service is now unable to produce those records which the Commission believes should be produced, allowing it to fully document the course of his appointment. Accordingly, the conclusion may be drawn that Mr. Groff's PFS-9 appointment can and should be taken at face value--as valid under the law then in effect.

In the circumstances our Office would offer no objection to full service credit to Mr. Groff for all purposes.

PAUL G. DEMBLING

Acting Comptroller General  
of the United States