

DOCUMENT RESUME

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[Compensation for Services Prior to Appointment]. B-189351.  
August 10, 1977. 2 pp.

Decision re: Jane Hartley; Susan van den Toorn; Thomas Fletcher;  
by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation  
(305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel  
Management (805).

Organization Concerned: Department of Housing and Urban  
Development.

Authority: B-188424 (1977). B-183850 (1976). 52 Comp. Gen. 700.  
55 Comp. Gen. 109. 55 Comp. Gen. 111.

Donna D. Beecher, Director of Personnel Systems and Payroll Division, Department of Housing and Urban Development (HUD), requested a decision as to whether three employees may be compensated for days worked prior to their official appointments to positions within HUD. The employees were sworn in and began working for HUD in good faith and with the full knowledge of HUD officials prior to the effective date of their appointments. In such circumstances, the employees may be considered de facto employees and HUD may properly compensate them for the reasonable value of the services performed while in de facto status. (Author/SC)

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**DECISION**



*See attached  
Civ. Serv.*

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

FILE: B-189351

DATE: August 10, 1977

MATTER OF: Jane Hartley, Susan van den Toorn, and Thomas Fletcher--  
Compensation for services prior to appointment

DIGEST: Employees were sworn in and began working for HUD in good faith and with full knowledge of HUD officials prior to effective date of their appointments. In such circumstance, employees may be considered de facto employees since they performed duties in good faith under color of authority, and HUD may properly compensate employees for reasonable value of services performed while in de facto status.

This action is in response to a request from Ms. Donna D. Beecher, Director of Personnel Systems and Payroll Division, Department of Housing and Urban Development (HUD), for a decision as to whether three employees of HUD, Jane Hartley, Susan van den Toorn, and Thomas Fletcher, may be compensated for days worked prior to their official appointments to positions with HUD.

The record shows that Jane Hartley began working at HUD as a Consultant to the Assistant Secretary (Designee) for Legislative Affairs on March 8, 1977. She was sworn in on March 9, 1977, but the official effective date of her appointment as shown on her SF 50, Notification of Personnel Action, was March 23, 1977. Susan van den Toorn began working at HUD as a Consultant to the Assistant Secretary (Designee) for Legislative Affairs on March 7, 1977, and was sworn in on that same day. The official effective date of her appointment shown on the SF 50 was March 23, 1977. Thomas Fletcher began working at HUD as an Assistant for Legislative Affairs on March 11, 1977. He was not sworn in until March 25, 1977. The official effective date of his appointment, according to the SF 50, was also March 25, 1977.

The record further indicates that in each case it took the Personnel Office of HUD some time to obtain information from the employees, to prepare the necessary personnel actions, and to process the papers. However, the three employees worked in good faith during this period of time, and operated under the assumption that they would be paid for their services. These employees were instructed to report to work by officials within the Office of Legislative Affairs and the Assistant Secretary (Designee) of that office was aware of the fact that the employees were working for HUD.

B-18935)

The Director of Personnel Systems and Payroll Division of HUD urges our Office to consider all three employees as de facto employees from the date each employee entered on duty until the effective date of each employee's official appointment in order that their claims for compensation for such period might be paid.

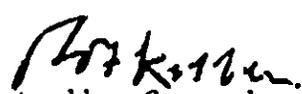
A de facto officer or employee is one who performs the duties of an office or position with apparent right and under color of an appointment and claim of title to such office or position. Where there is an office or position to be filled, and one acting under color of authority fills the office or position and performs the duties, his actions are those of a de facto officer or employee. See Matter of William A. Keel, Jr. and Richard Hernandez, B-188424, March 22, 1977.

Ms. Hartley, Ms. van den Toorn, and Mr. Fletcher began working in advance of their official appointments, but they were instructed to report for duty by officials of the Office of Legislative Affairs of HUD and the Assistant Secretary, (Designee) of that office was fully aware that the employees were working for HUD. These factors clearly demonstrate that they performed the duties of the positions to which they were subsequently appointed with apparent right and under color of authority and claim of title to the position. Moreover, they served in good faith and with no indication of fraud. Thus, all three may be considered to be de facto employees. See Keel and Hernandez, supra.

Persons who serve in good faith as de facto officers or employees may be paid compensation equal to the reasonable value of services rendered during such period of service. 52 Comp. Gen. 700 (1973). The absence of a valid appointment for the period in question is no obstacle to de facto status in view of the services rendered in good faith and under the color of authority. 55 Comp. Gen. 109, 111 (1975).

Accordingly, we conclude that HUD may properly compensate Ms. Hartley, Ms. van den Toorn, and Mr. Fletcher for the reasonable value of their services rendered while they were in a de facto status. The reasonable value of services rendered may be established at the rates of basic compensation set for the positions to which each was subsequently appointed. See Keel and Hernandez, supra, and Matter of James W. Jansen, B-183850, March 18, 1976.

Deputy

  
Comptroller General  
of the United States