

5939

*Supervisor
Civil Service*

DECISION



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

FILE: B-189741

DATE: April 4, 1978

**MATTER OF: James C. Howard III - Forest Service, Department
of Agriculture - De Facto Employee**

DIGEST: Employee was hired by Forest Service and began working about 2 weeks prior to the date the position description was approved. He filed a claim for compensation and leave for this period. Employee may be considered a de facto employee since he performed his duties in good faith and hence may be compensated for the reasonable value of his service during de facto period. However, de facto employees do not earn leave and hence the leave portion of the claim is disallowed.

This action involves a request for an advance decision submitted by Ms. Orris C. Huet, authorized certifying officer, Department of Agriculture, regarding a claim from Mr. James C. Howard III, for work performed prior to the effective date of his appointment.

Mr. Howard was hired by the Hiawatha National Forest, Forest Service, Department of Agriculture, as a Cooperative-Education student. He began work on June 7, 1976, at which time he completed all necessary personnel forms as instructed by the employing office. However, officials of the Hiawatha National Forest were not aware that an approved and classified position description was required before an employee could be properly appointed. As a result of this error, the position filled by Mr. Howard was not officially established until June 21, 1976, and hence Mr. Howard's first official workday in the position was June 22, 1976.

Mr. Howard is claiming compensation for 88 hours of work for the period of June 7 through June 21, 1976. In addition he is claiming 8 hours of annual leave and 8 hours of sick leave because he was not allowed: (1) leave for pay period 12 (June 7 through June 18, 1976) inasmuch as his appointment was not in effect, and (2) leave for pay period 13 (June 21 through July 2, 1976) inasmuch as he did not officially work a full pay period since his appointment was not effective until June 22. 31 Comp. Gen. 215 (1951) and B-125537, October 6, 1955.

R-189741

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. 30 Comp. Gen. 228 (1958). We have recently extended the de facto rule to permit payment for the reasonable value of services rendered by persons who served in good faith. 52 Comp. Gen. 700 (1973); 55 id. 109 (1975); and Matter of William A. Keel, Jr., and Richard Hernandez, B-188424, March 22, 1977. However, because he is not an employee within the meaning of 5 U.S.C. § 2105, a de facto employee does not accrue any annual leave during the de facto period so as to be entitled to a lump-sum payment. See 31 Comp. Gen. 262 (1952).

Accordingly, we conclude that the Department of Agriculture may compensate Mr. Howard for the reasonable value of the services he rendered while in a de facto status inasmuch as he served in good faith during the period in question. In this instance, the reasonable value of service rendered may be established at the rate of basic compensation set for the position to which he was officially appointed on June 22, 1976. However, he may not be compensated for accrued leave because no leave was earned during the period of his de facto status.

A. F. K. 11m.
Deputy Comptroller General
of the United States