

*M. Douglas Smith*  
*7559*

**DECISION**



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

FILE: B-191397

DATE: September 6, 1978

MATTER OF: Betsy Ducheneaux - De Facto Employee

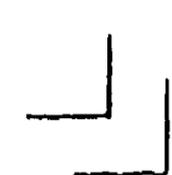
**DIGEST:** Employee began working at Public Health Service (PHS) Indian Hospital approximately 6 weeks prior to PHS' discovery that necessary documents were not completed before she began employment. Employee may be considered de facto employee since she performed her duties in good faith and, therefore, may be compensated for the reasonable value of her service during de facto period. However, de facto employees do not earn leave and, thus, her claim for 2 days of sick leave is disallowed.

This matter involves a request for an advance decision from Ms. Elenor E. Clements, an authorized certifying officer of the Public Health Service (PHS), Department of Health, Education, and Welfare, regarding a claim from Mrs. Betsy Ducheneaux, for work performed prior to the effective date of her appointment.

Mrs. Ducheneaux began working in the Food Service Department at the PHS Indian Hospital, Egel Butte, South Dakota, on November 20, 1977. The conditions surrounding the beginning of her employment are detailed in a letter dated June 6, 1978, from Robert L. Thurmon, Service Unit Director for the PHS Indian Hospital to Mrs. Clements. Mr. Thurmon states:

"Mrs. Betsy Ducheneaux began employment on 20 Nov. - 30 Dec., 1977 acting in good faith upon the instructions of Mrs. Beatrice Lind, head of the Dietary Department. Mrs. Lind had asked to hire a temporary employee to assist in the kitchen. The request was approved and she was informed to proceed with the normal hiring process. Mrs. Lind instructed Mrs. Ducheneaux to report for duty and did not have the necessary documents prepared for the entry on duty. It was later discovered that this had occurred and the necessary forms were filled out, processed and the employee was officially entered on duty.

"Mrs. Ducheneaux performed the services in good faith and under the color of authority.



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- In as much as she had never been employed by Civil Service she was unaware of any forms or other items to be submitted."

Mr. Thurmon concludes his letter by recommending approval of the claim.

Mrs. Ducheneaux requested payment of \$1,329.60 for 240 hours of work at the rate of \$5.54 per hour. Mrs. Clements has noted, however, that Mrs. Ducheneaux was on sick leave and did not work on December 26 and 27, 1977. Consequently, she states the claim should be reduced to 224 hours resulting in a total claim of \$1,240.96.

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 (1950). Several recent decisions have 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); Matter of William A. Keel, Jr. and Richard Hernandez, B-188424, March 22, 1977; Matter of Jackie R. Smarts, B-188574, December 29, 1977; Matter of James C. Howard, III, 57 Comp. Gen. 406 (1978); and Matter of James K. Saufley, B-189000, June 16, 1978, 57 Comp. Gen. \_\_\_\_.

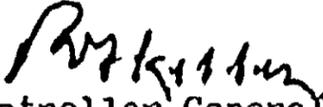
In the present case, there is no indication that Mrs. Ducheneaux had notice that her appointment was not yet effective when she began working. She had never been employed by the civil service before and was unaware of the necessity for completion of the required forms prior to beginning employment. There is no question of her acting in good faith in this matter.

With respect to Mrs. Ducheneaux' claim for payment for 16 hours of sick leave, we have held that while a de facto employee may receive holiday pay, Matter of Jackie R. Smarts, supra, he is not entitled to leave because no leave is earned during the period of de facto status. Matter of James C. Howard, III, supra; and Matter of James K. Saufley, supra.

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Accordingly, we conclude that Mrs. Ducheneaux may be compensated for the reasonable value of her services rendered while in a de facto status. In this case, the reasonable value may be established by reference to the rate of basic compensation set for the position to which she was officially appointed on January 1, 1978. However, she may not be compensated for the 16 hours she did not work while on sick leave.

Therefore, the claim of Mrs. Ducheneaux may be paid in accordance with this decision, if otherwise proper.

  
Deputy Comptroller General  
of the United States