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DECISION



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

FILE: B-188693

DATE: January 5, 1979

MATTER OF: Cherrold W. Seabrook - [Compensation for
period of improper appointment]

DIGEST: Civil Service Commission (CSC) directed cancellation of employee's temporary appointment at GS-6 level because of violation of CSC requirements. Since employee had basic qualification for appointment and appointment was not contrary to law it was voidable only and corrective action as ordered by CSC is prospective only. Employee is entitled to all benefits of position to which appointed until separated or transferred.

This action involves a request for a decision by *requester* (Mr. Preston David, Executive Director, Equal Employment Opportunity Commission (EEOC)) regarding the entitlement to compensation of an employee, Ms. Cherrold Williams Seabrook, during a period of employment under an improper appointment.

As a result of a personnel management evaluation conducted in March 1976, the Civil Service Commission (CSC) found that violations of Civil Service restrictions had occurred in the temporary appointment of Ms. Seabrook to the position of Secretary (Typing), GS-318-6, and the CSC ordered the appointment terminated. The period of the improper appointment was August 4, 1974, to May 8, 1976. Ms. Seabrook was converted to reinstatement under merit staffing to the position of Equal Employment Technician, GS-301-5, on May 9, 1976. Additionally, it is noted that Ms. Seabrook was initially appointed in EEOC without a break in service from the Office of Minority Business Enterprise (OMBE), where she was serving under a career appointment as a Clerk-Stenographer, GS-312-5.

By virtue of the temporary status of the employee with EEOC during the period involved, decision is requested as to whether the employee is entitled to pay at the GS-6/2 level for the time worked under the improper appointment. EEOC advises that Ms. Seabrook performed the duties of the GS-6 position during the period involved in a highly satisfactory manner and had no knowledge of any improprieties in her appointment.

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In the alternative, EEOC suggests that, if we determine that any erroneous payments of pay were made then a waiver of the erroneous payment of compensation under 5 U. S. C. 5584 would be for application. The agency states that there is no evidence of fraud, misrepresentation, fault or lack of good faith on the part of the employee in the improper appointment.

Ms. Seabrook qualified for appointment to a secretarial position, but upon examination of the appointment the Civil Service Commission determined that she was not qualified for appointment at the GS-6 level and ordered her appointment terminated. Failure to conform to the Civil Service Commission regulation did not make the appointment void ab initio but merely voidable. 37 Comp. Gen. 483 (1958). Until action is taken to correct a voidable appointment, the employee holds the position and is entitled to all the benefits thereof. Action taken to correct the appointment or place the employee in a position which complies with the applicable regulations is prospective only.

For the reasons stated, no overpayment is involved in this case and the employee is entitled to service credit for the time spent in the grade GS-6 position.


Deputy Comptroller General
of the United States