

PLM-11
Mr. Mitchell

12606

DECISION



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

Nonappropriated Fund Activity Employee Converted to Competitive Service

FILE: B-194670

DATE: January 22, 1980

MATTER OF: Appointment of nonappropriated fund activity employee to the competitive service

DIGEST: An employee of a nonappropriated fund activity whose position is to be converted to the competitive service has only the rights of an applicant for a competitive service appointment until the appointing authority exercises discretion to appoint. Therefore, employee whose appointment is delayed due to investigation resulting in dismissal from nonappropriated fund activity position is still a non-appropriated fund activity employee until dismissal. This is the case even though appellate authority deems the dismissal was unjustified, since appointment to competitive service was not made until a later date. Thus, nonappropriated fund activity may not be reimbursed salary expense of the employee from appropriated funds.

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A decision is requested on the propriety of appropriated funds being used to reimburse a nonappropriated fund instrumentality for salary paid to an employee whose position was scheduled to be converted to the competitive service but the conversion was delayed. Reimbursement in the reported circumstances is not authorized.

The request for decision was made by the Accounting and Finance Officer, 1606th Air Base Wing, Kirtland Air Force Base, New Mexico.

The Commander, 1606th Air Base Wing, requested and was granted the authority by the Civil Service Commission (now Office of Personnel Management) to convert an employee's position from a UA-9, Nonappropriated Fund Assistant Club Manager, to the competitive service GS-9, Assistant Club Manager. The conversion was scheduled to take place in July 1977. However, an investigation

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B-194670

was commenced as a result of alleged improprieties, which delayed the conversion. Subsequently, on November 17, 1977, the employee was dismissed. The nonappropriated fund instrumentality paid the employee's salary for the period of the investigation until the dismissal.

The employee contested the dismissal under Air Force regulations. A determination was made by the 22d Air Force Commander that the removal action taken against the employee be cancelled and, consistent with law and regulation, the employee be "made whole" as if the removal had never occurred. As a result the employee was appointed to the GS-9 position on May 1, 1978, with a service computation date of July 18, 1977.

On October 10, 1978, the manager of the nonappropriated fund instrumentality requested that appropriated funds be used to reimburse the instrumentality, the salary, \$5,780.59, paid to the employee from July 18, 1977, through November 16, 1977. The request was based on the concept that if the employee is to be made whole she would have been appointed to the competitive service on July 18, 1977.

Subsection 2105(c) of title 5, United States Code, provides that employees paid from nonappropriated funds of instrumentalities of the United States under the jurisdiction of the Armed Forces are deemed not to be employees of the United States for the purpose of laws administered by the Office of Personnel Management (Civil Service Commission) with certain exceptions. In view of this, a nonappropriated fund employee does not have the same rights concerning employment as an employee who is a member of the competitive service.

Thus, an individual employed by a nonappropriated fund instrumentality whose position is to be converted to the competitive service has only the rights of an applicant for a position in the competitive service until such time as the individual is actually appointed to the competitive service.

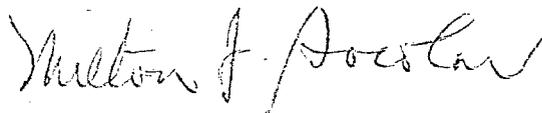
B-194670

Generally, appointments are effective only after the appointing authority exercises its discretion to appoint and the appointee accepts and enters on duty. And while an appointment may be made effective on a later date, it may not be made effective on a date earlier than the date the appointing authority exercises its discretion to appoint. See 54 Comp. Gen. 1028, 1030 (1975) and cases cited therein.

In this case, the individual concerned was employed by the nonappropriated fund instrumentality until the date of dismissal.

The appeal to her dismissal was taken pursuant to an Air Force regulation applicable only to nonappropriated fund instrumentality employees and deals only with their employment as such. Presumably any relief afforded under such regulations would relate only to an individual's status as an employee of the nonappropriated fund instrumentality. Therefore, since she was not appointed to the competitive service prior to her dismissal, it is our view that she was properly paid from nonappropriated funds during the period of the investigation.

Accordingly, the nonappropriated fund instrumentality may not be reimbursed the expense of the employee's salary for the period involved from appropriated funds.



For The Comptroller General
of the United States