

Neidinger  
PM-I

**DECISION**



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

**FILE:** B-218705

**DATE:** October 21, 1985

**MATTER OF:** Nathaniel C. Elie - Reemployed  
Annuitant - Compensation - Lack of  
Appointment

**DIGEST:**

1. A Civil Service annuitant claims entitlement to full compensation, in addition to his annuity, for temporary full-time duties allegedly performed following his retirement. Under the provisions of 5 U.S.C. § 8344(a), the salary of a retired Civil Service annuitant must be reduced by the amount of his annuity during any period of actual employment. However, since the claimant states that he was not appointed to a position following retirement, which statement has been confirmed by the agency's personnel office, he is not entitled to any compensation, reduced or otherwise, for the period in question.
  
2. A Civil Service annuitant claims entitlement to compensation in addition to his annuity for temporary full-time duties allegedly performed following his retirement. He states that he was never appointed to a position following his retirement, but contends that his supervisor accepted his offer to continue working after retirement, and said that he would find a way to pay him. The claim is denied. Under 31 U.S.C. § 1342, an officer or employee of the government is prohibited from accepting the voluntary services of an individual. Further, the government is not bound by the unauthorized acts of its agents, even where the agent may be unaware of the limitations on his authority.

033511

This decision is in response to a letter from Mr. Nathaniel C. Elie, in which he requests further consideration of his claim for compensation as a Federal employee during the period of September 2, 1980, through October 10, 1980. We conclude he is not entitled to compensation for the following reasons.

BACKGROUND

Mr. Elie's claim was the subject of a settlement by our Claims Group, Z-169652, February 20, 1985, which disallowed his claim. The basis for the disallowance was a finding that there was no evidence to show that he worked as a Federal employee during the period claimed.

The basis for his request for further consideration is his contention that there were various persons who could confirm that he was promised that, if he worked, efforts would be made to pay him. Further, he contends that there were others who could confirm the number of hours he worked through informal records they kept.

The facts in the case are brief. Mr. Elie was employed as a Supervisory Supply Technician with the 193rd Infantry Brigade, United States Army, Fort Clayton, Republic of Panama. On August 29, 1980, he was retired from the Civil Service with more than 40 years of Federal service. Information received from the Civilian Personnel Office (CPO), Headquarters Command, 193rd Infantry Brigade, indicates that they have no record that he was reappointed to a position following his retirement, or that he performed any duties during the period claimed.

Mr. Elie states that shortly before he retired, he and his supervisor discussed the possible temporary continuation of his employment following retirement because there was apparently no one to replace him. Arrangements supposedly were made by his supervisor through the CPO to rehire him as a reemployed annuitant on a temporary basis. Mr. Elie states that on September 2, 1980, a CPO representative explained the compensation structure of that type of employment to him. He states further that, after receiving this information, he informed his supervisor that he would not accept reemployment on that basis since he would not receive his full pay for any period he worked. In spite

of that, he stated that he offered to continue working until a replacement could be found. He contends that his offer was accepted and that it was agreed by his supervisor that every attempt would be made to find a way to pay him the full pay for the work he did. He does admit, however, that he was never appointed to any position following his retirement.

#### DECISION

The employment of an individual by an agency of the Federal government and the entitlement to receive compensation for the position to which he is appointed and serving are matters strictly governed by statute.

As noted, Mr. Elie retired from the Civil Service on August 29, 1980. Section 3323(b) of Title 5, United States Code, provides that retired annuitants under the Civil Service Retirement Act may be reemployed to serve in an appointive position. If he was so employed, the only basis upon which Mr. Elie could have been compensated would be under the provisions of 5 U.S.C. § 8344. That section authorizes reemployment of Civil Service annuitants. However, subsection (a) provides, in part, that during the period of such employment an amount equal to the annuity which an individual could otherwise receive during the period of actual employment "shall be deducted from his pay."

In other words, the maximum amount of compensation Mr. Elie could have received, if he had been actually reemployed following his retirement, would be the difference between the annuity he was receiving and the salary authorized for the position to which he was appointed. See 28 Comp. Gen. 693 (1949); and Adrian D. Nelson, B-188520, April 21, 1977. We are not aware of any basis upon which Mr. Elie could have been reemployed on a temporary full-time basis by the Federal government and receive full compensation in addition to his Civil Service annuity.

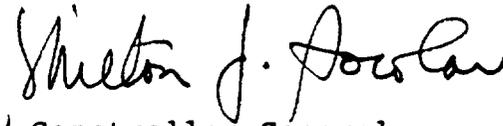
With regard to Mr. Elie's assertion that his supervisor agreed to accept his offer to continue working without appointment and would find a way to pay him, 31 U.S.C. § 1342 (1982)--formerly 31 U.S.C. § 665(b)--prohibits an officer or an employee of the United States

B-218705

from accepting the voluntary services of an individual. This would include permitting Mr. Elie to perform the duties of a position without being properly appointed to that position. As for the alleged agreement between Mr. Elie and his supervisor, it is a well settled rule that the government is not bound by the acts of its agents which go beyond the actual authority conferred by statute and regulations. This is so even though the agent may have been unaware of the limitations on his authority. Further, the government is not prevented from repudiating any such unauthorized acts. See Dr. Frank A. Peak, 60 Comp. Gen. 71, 74 (1980) and cases cited. See also Schweiker v. Hansen, 450 U.S. 785 (1981); and Federal Crop Insurance Corp v. Merrill, 332 U.S. 380 (1947).

Since the record shows that Mr. Elie rejected the only basis upon which he could have been reemployed and no attempt was ever made to initiate the necessary paperwork to reemploy him in any capacity during the period in question, it is our view that he never achieved any employment status following his retirement. Therefore, he is not entitled to any compensation for the period involved.

Accordingly, the action taken by our Claims Group, is sustained.

*for*   
 Comptroller General  
 of the United States