

Volpe



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sidney P. Arnett and Mary Ann Barron -
Erroneous Appointments - De Facto Employment

File: B-220720, B-220791

Date: September 8, 1986

DIGEST

1. An Air Force employee who served under an erroneous appointment for 3-1/2 months may be considered a de facto employee. The agency's failure to consult a regional register of civil service positions did not violate an absolute statutory prohibition, and there is no evidence of fraud or misrepresentation by the employee.

2. An Air Force employee who received three erroneous appointments among the many Federal positions she held over a period of 30 years may be considered a de facto employee during the periods of erroneous appointments. Although the employee never achieved career status because she held temporary or excepted appointments, she was erroneously appointed to career positions on three occasions. These erroneous appointments did not violate any absolute statutory prohibition, and there is no evidence of fraud or misrepresentation by the employee.

DECISION

ISSUE

The issue in this decision concerns the legal status of service performed by two Federal employees who were erroneously appointed to their positions. We hold that these employees may be considered de facto employees where (1) the appointments did not violate any absolute statutory prohibition, and (2) the employees were not guilty of fraud or misrepresentation.

BACKGROUND

This decision is in response to two requests from the Director of Civilian Personnel, Headquarters Tactical Air Command, Langley Air Force Base, Department of the Air Force, concerning erroneous appointments of two Air Force employees, Mr. Sidney P. Arnett and Ms. Mary Ann Barron.

036631

Mr. Arnett's Federal civilian service began with an appointment as Supervisory Computer Specialist, grade GS-9, at the Bergstrom Air Force Base, Texas, effective December 1, 1983. However, during a subsequent audit, the Office of Personnel Management (OPM) determined that Mr. Arnett was improperly appointed since the Air Force had failed to examine a regional register for Computer Specialist positions prior to selecting Mr. Arnett.

Mr. Arnett was properly appointed to this position effective March 15, 1984, and the Air Force questions whether he may be credited with service for this 3-1/2 month period for purposes of retirement, leave, within-grade increases, etc. The Air Force reports that the erroneous appointment was due to an oversight since they were unaware that this register existed. The Air Force also reports that Mr. Arnett accepted the appointment in good faith with no knowledge of the error by the Air Force.

Ms. Barron's Federal career began in 1955 and has involved a number of positions with the Departments of Army and Air Force, the latest being Classification Clerk (Typing) grade GS-4, with the Myrtle Beach Air Force Base, South Carolina. The Air Force reports that during a personnel evaluation in February 1985, the Air Force reviewed Ms. Barron's personnel folder and discovered that she received two competitive career appointments during the period from May 31, 1970, to August 10, 1974, and another competitive career appointment for the period from August 24, 1981, to June 15, 1985. These appointments were erroneous because Ms. Barron had previously held only temporary and excepted appointments and had never acquired career status or eligibility for reinstatement in a career position.

The Air Force properly appointed Ms. Barron to a career position effective June 16, 1985, but the Air Force questions whether she may be granted service credit for career tenure and time-in-grade purposes for these periods of erroneous appointment.

In both cases the Air Force considered whether to request from OPM a variation from civil service rules under 5 C.F.R. § 5.1 to correct these errors. However, the Air Force decided not to request the variation in the absence

of evidence that the employees could have been properly appointed at the time of their appointments from civil service registers.

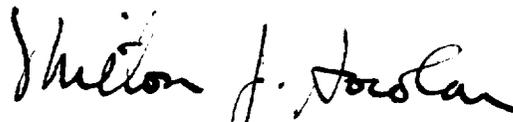
OPINION

Our decisions have held that where a person has been appointed to a position by an agency and the appointment is subsequently found to have been improper or erroneous, the person may be granted de facto employment status and is thereby entitled to receive compensation and service credit for purposes of leave accrual. Thomas C. Collins, 61 Comp. Gen. 127 (1981); and Victor M. Valdez, Jr., 58 Comp. Gen. 734 (1979). The two exceptions to this rule are where (1) the appointment was made in violation of an absolute statutory prohibition, or (2) the employee was guilty of fraud in regard to the appointment or deliberately misrepresented or falsified a material matter. See Collins and Valdez, cited above.

Both of these individuals in the cases before us appear to qualify for de facto employment status. There was no statutory bar to their employment, and there is no indication of fraud or misrepresentation by these individuals in connection with their appointments. Each appears to have served in good faith with no knowledge of the impropriety of their appointments. See Collins, cited above.

There are no claims for unpaid compensation, so that our decision deals solely with service credit for leave and other purposes. Accordingly, we hold that Mr. Arnett and Ms. Barron are entitled to credit for good faith service for leave accrual and lump-sum leave payment purposes.

As to whether this service is creditable for retirement purposes, we note that matters concerning retirement credit are within the jurisdiction of the Office of Personnel Management. See 5 U.S.C. § 8347 (1982) and Urban Kinnunen, B-207856, September 13, 1982. Questions concerning creditable service for retirement should be referred to that Office.

for 
Comptroller General
of the United States