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**DECISION**

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

FILE: B-196088

DATE: November 1, 1979

MATTER OF: Dr. Frank von Hippel - Compensation For Services  
Prior To Appointment

**DIGEST:** An individual, ultimately appointed as an intermittent consultant, attended three meetings at the Department of Energy's request prior to the date of his appointment. He was reimbursed for his travel and transportation expenses under invitational travel orders. Since the record does not support the conclusion that he attended the meetings under color of authority and with the expectation that he would be compensated for other than his travel expenses, the individual may not be compensated for his services prior to appointment as a de facto employee.

We have been asked by Robert L. Zanetell, certifying officer for the Department of Energy (DOE), to issue a decision as to whether Dr. Frank von Hippel may be compensated as a de facto employee for services rendered prior to the date of his appointment as a consultant.

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During the latter part of 1977 a determination was made by the Assistant Secretary for Energy Technology to obtain Dr. von Hippel's services as a consultant in connection with DOE's International Nuclear Fuel Cycle Evaluation Activities (INFCE). At the request of the Program Director for Nuclear Energy, Dr. von Hippel attended three INFCE meetings. The meetings, which were held in Washington, D.C., and Vienna, Austria, took place in November and December of 1977 and in January of 1978. The certifying officer has stated that Dr. von Hippel was not in fact employed by DOE until March 6, 1978, when he was issued a letter appointing him as a consultant on an intermittent basis for the period from March 6, 1978, to March 5, 1979, at a rate of compensation of \$182 per day. With regard to the period prior to March 6, a memorandum from the Controller explains:

"Despite the documented efforts of this office to put formal arrangements in place on a timely basis, a series of administrative and procedural deficiencies resulted in a lack of official consultant coverage until March 6, 1978."

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While DOE has reimbursed Dr. von Hippel's travel expenses prior to March 6, 1978, under invitational travel orders, the certifying officer questions whether he may be paid a salary for the 10½ days that he attended the INFCE meetings.

Decisions of this Office have long recognized that an individual who performs the duties of a Federal office or position with apparent right and under color of an appointment is to be regarded as a de facto employee and may retain salary already received. In certain cases where an individual has been appointed to a position and the appointment is subsequently found to have been improper or erroneous, we have held that the individual, as a de facto employee, is entitled to unpaid compensation, as well as accrual of leave. Victor M. Valdez, Jr., B-191977, August 17, 1979.

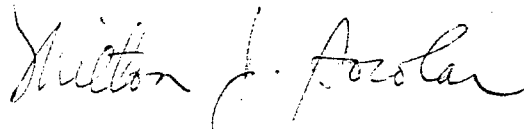
Although the Valdez decision is limited to cases in which an agency improperly appoints an individual, we have recognized that the lack of an appointment is no obstacle to de facto status and payment of unpaid compensation in certain cases where services are nonetheless rendered in good faith and under color of authority. Thus, in 55 Comp. Gen. 109 (1975) we held that a retired Army officer serving without an appointment as an assistant to an Ambassador could be paid the reasonable value of his services despite the lack of an appointment. In that case, the individual's services were rendered pending routine security investigation with the knowledge that he had not been appointed, but with the erroneous understanding that he would be compensated for his services by means of a retroactive appointment. The holding in that decision was applied in William H. Keel, Jr., et al., B-188424, March 22, 1977, to compensate individuals who were ordered by competent authority to enter on duty in advance of their official appointments and who performed the duties of the positions to which they were subsequently appointed with apparent right and under color of authority. To the same effect, see Jane Hartley, et al., B-189351, August 10, 1979.

Since Dr. von Hippel's services prior to March 6, 1978, were not rendered under an erroneous appointment but before any appointment was made, his entitlement to compensation for attendance at the INFCE meetings is governed by 55 Comp. Gen. 109 (1975) and the Keel and Hartley line of decisions. In those cases the individuals found to be de facto employees performed the duties of regular positions under color of authority and with the reasonable expectation that they would

be paid for their services. The record submitted in Dr. von Hippel's case does not support the conclusion that he attended the meetings in Washington, D.C., and Vienna, Austria, with any expectation that he would be compensated for other than his travel expenses.

It is not unusual for the Government to invite an individual with a particular expertise to attend a meeting and to share the benefit of his views without compensation other than by way of reimbursement for his travel and transportation expenses. In addition to authorizing travel expenses for experts and consultants, 5 U.S.C. § 5703 specifically provides that an employee "serving without pay or at \$1 a year" may be paid travel and transportation expenses while away from his home or regular place of business and at the place of employment or service. It is under this authority that Dr. von Hippel was issued invitational travel orders to reimburse the expenses he incurred in traveling to and attending the meetings. This is but one factor that tends to raise a doubt as to whether Dr. von Hippel attended the three meetings with the assurance or expectation that he would receive any other form of compensation. Thus, on the basis of the record submitted, we are unable to find that Dr. von Hippel's status prior to March 6, 1978, was that of a de facto employee.

In addition to the particular matter of Dr. von Hippel's entitlement, the certifying officer has asked whether, in future cases, DOE has the authority to determine de facto status and retroactively amend appointment documents. Where an agency has received a nondoubtful claim for compensation by an individual who has served in a de facto status as defined by decisions of this Office, the agency may pay the employee for his services, provided payment is not barred by 31 U.S.C. § 71a. However, as indicated in the Keel decision, the determination that an individual served in a de facto status does not retroactively effect the date of his appointment. Certifying officers should continue to submit doubtful claims to this Office.



For The Comptroller General  
of the United States