



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

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JUN 18 1973

B-178264

Mr. C. E. Tipton
Authorized Certifying Officer
Forest Service
United States Department of Agriculture
P. O. Box 230
Juneau, Alaska 99801

Dear Mr. Tipton:

This is in reply to a letter, dated March 16, 1973, with enclosed claim and file of Henry B. Roberts, requesting an advance decision whether the unpaid salary for the period September 11 through September 17, 1972, and October 1 through October 14, 1972, may be paid to Sgt. Roberts and if not, should a request for refund from Roberts for the \$226.51 paid him for the period September 17 through September 30, 1972, be made.

Henry Roberts was hired on September 11, 1972, under the name of Scott B. Janette in a temporary employment status by the Forest Service, United States Department of Agriculture, after he indicated that he was honorably discharged from the Armed Forces, and that he would furnish evidence of his discharge at a later date. According to the report of the Forest Service, after unsuccessful attempts to verify the honorable discharge from the employee, the Forest Service received notification from the Military Police that Scott B. Janette was actually Sgt. Henry B. Roberts, who was AWOL from Fort Wainwright, Alaska, and that he had turned himself in to authorities on October 14, 1972.

You refer to 18 Comp. Gen. 815 (1939) as standing for the proposition that retention of salary received under a de facto employee basis was not permissible. That decision is not for application in the present case since it involved an alien. Retention of salary in that case was precluded by section 5 of the Independent Offices Appropriation Act, 1939, 52 Stat. 635, which specifically prohibited payment of compensation to any person not meeting the citizenship requirements of that act.

The case you have submitted is somewhat similar to the facts considered in our decision B-90642, May 4, 1950, copy enclosed, wherein an

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Army enlisted man while in an AWOL status was employed in a civilian position by the Corps of Engineers. It was held therein that the individual was entitled to payment for compensation and per diem earned prior to his apprehension and return to military control. The conclusion reached in that decision may be applied to the present case. Accordingly, the unpaid salary for the period prior to October 14, 1972, the date of apprehension, may be paid to the claimant, assuming of course that he did not receive military pay for such period. It follows that no action is required with respect to payments already made.

The enclosures submitted with your letter are returned.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States

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