

PLM-11

DECISION



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

10,407

FILE: B-194431

DATE: June 8, 1979

Myron

MATTER OF: Myron D. Starr - De Facto employee

[Entitlement to Compensation for Work Performed Prior to Attaining Minimum Age Requirement]

DIGEST: An individual age 15 was appointed to a position before attaining the minimum age requirement of 16, and performed the duties of the position for 139 hours before the error was discovered and his employment terminated. The individual was a de facto employee, and may be compensated for the services actually rendered.

ALC 00023
The issue presented in this case on a request for an advance decision from the Department of Housing and Urban Development (HUD) *was* whether an individual may be compensated for a period of work performed prior to his meeting the age requirements for appointment pursuant to Federal regulations. The answer is in the affirmative.

Mr. Myron D. Starr was employed as a student aide by the Detroit Area Office of HUD on a referral from the Michigan Employment Security Commission and presentation of a student working permit. The Michigan law authorizes employment of persons 14 years of age and older. During the period of employment, December 18, 1978, through February 7, 1979, Mr. Starr was 15 years old. Mr. Starr was appointed to the Federal position in a special youth program named the "Stay-in-School Campaign", Federal Personnel Manual (FPM) chapter 213, Appendix F (July 1, 1974). Paragraph 213-F-2a of the FPM provides that a person may not be appointed in this program unless he has reached his 16th birthday. Mr. Starr filled an existing position and performed the duties of that position for 139 hours before the error in appointment was discovered and his employment terminated. There is no indication of any fault by Mr. Starr or any attempt by him to conceal his age either before or after his appointment.

We have long held that a de facto employee may retain compensation that has been paid to him. 38 Comp. Gen. 175 (1958). More recently, we have authorized payment of compensation to a de facto employee after it was ascertained that the employee's status was that of a de facto employee. 52 Comp. Gen. 700 (1973) and 55 *id.* 109 (1975). In both of these cases, individuals performed services in good faith, under color of authority, but without a valid appointment. In each case, at the time of termination, the

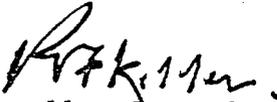
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individuals had received no compensation for the services performed. In both cases we authorized payment.

In the instant case, Mr. Starr may be considered a de facto employee. The facts indicate that he served in good faith and without fraud. He may be paid the reasonable value of his services despite lack of authorized appointment in view of the fact that had compensation been paid, he could retain it under the de facto rule or recovery could be waived under 5 U.S.C. 5584 (1976).

Accordingly, Mr. Starr may be compensated for services performed.


Deputy Comptroller General
of the United States