

DOCUMENT RESUME

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[Nepotism]. B-186453. May 2, 1977. 3 pp.

Decision re: Tommy B. Grantham; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation (300).
Contact: Office of the General Counsel: Civilian Personnel.
Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Air Force; Civil Service Commission.

Authority: 5 U.S.C. 3110. 31 U.S.C. 74. P.F.M. ch. 340. Air Force Manual 177-104, para. 10709c. 36 Comp. Gen. 175. 42 Comp. Gen. 260.

Major John F. Harratt, an Accounting and Finance Officer at Eglin Air Force Base, Florida, requested an advance decision concerning a claim for unpaid pay and accrued leave. The civilian employee of the Air Force, who was removed from his position because his appointment violated anti-nepotism statutes, was appointed without authority. His claim for unpaid pay and accrued leave say not be paid, and action may be initiated to recover wages erroneously paid during the period of illegal employment. (Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20540

FILE: B-186453

DATE: May 2, 1977

MATTER OF: Tommy H. Grantham - Nepotism

DIGEST: Civilian employee of Department of Air Force, who was removed from his position by direction of the Civil Service Commission because his appointment violated anti-nepotism statute, 5 U.S.C. § 3110 (1970), was appointed without authority and thus his appointment was void ab initio. Employee's claim for unpaid pay and accrued leave may not be paid, and action may be initiated to recover wages erroneously paid during period of illegal employment.

Major John F. Hanratty, an Accounting and Finance Officer at Eglin Air Force Base, Florida, requests by letter dated April 14, 1976, an advance decision from our Office pursuant to 31 U.S.C. § 74 concerning a claim for unpaid pay and accrued leave submitted by Mr. Tommy H. Grantham. Mr. Grantham was hired as a civilian employee of the Department of the Air Force on October 5, 1973. He was separated from his position effective March 5, 1976, by direction of the United States Civil Service Commission, Atlanta Region, after it was determined that he was originally appointed in violation of 5 U.S.C. § 3110 (1970) and part 310 of the Civil Service Regulations. Mr. Grantham was paid from appropriated funds through the pay period ending February 28, 1976. Upon separation he had due him the normal pay for the period February 29 through March 5, 1976, in the amount of \$217.66 and accrued leave of 64 hours in the amount of \$360.96.

Major Hanratty asks us, in light of Federal Personnel Manual chapter 310, subchapter 3-2, two questions: First, is Mr. Grantham entitled to payment of the unpaid pay and accrued leave; and second, should action be initiated in accordance with paragraph 40709c, AFM 177-104 (Civilian Pay Transactions at Base Level), to recover wages paid during the period October 5, 1973, through February 28, 1976. Major Hanratty has submitted to us a voucher covering these items which had been presented to him for payment.

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Section 3110 of the United States Code provides in pertinent part:

"(b) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

"(c) An individual appointed, employed promoted, or advanced in violation of this section is not entitled to pay and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced."

5 U.S.C. § 3110(a)(3) defines "relative" and includes "father-in-law" and "son-in-law" within its scope.

The record indicates that Mr. Grantham's father-in-law was the supervisor who interviewed Mr. Grantham and recommended that he be hired. The record also indicates that Mr. Grantham failed to indicate on his Personnel Qualifications Statement (Standard Form 171) that his father-in-law was employed by the Department of the Air Force as he was required to do. As a result, the appropriate officials did not realize, at the time Mr. Grantham was appointed, that he was employed in contravention of the above mentioned nepotism statute.

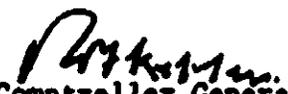
Because of the clear language of 5 U.S.C. § 3110 prohibiting the appointment of an individual whose appointment "* * * has been advocated by a public official, serving in * * * the agency, who is a relative of the individual * * *" and prohibiting such an individual from being paid money from the Treasury, services

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performed by Mr. Grantham cannot be regarded either as de jure or de facto. Compare 38 Comp. Gen. 175 (1958) and 42 Comp. Gen. 260 (1962). Accordingly, the claim presented by Mr. Grantham for unpaid pay and accrued leave may not be paid. Also, because Mr. Grantham's appointment was void ab initio and he cannot be regarded as either a de jure or de facto employee, action may be initiated to recover wages erroneously paid to him during the period October 5, 1973, through February 28, 1976.

Action should be taken in accordance with the above.

Deputy


Comptroller General
of the United States