

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

40585

FILE: B-184041

DATE: MAR 2 1976

MATTER OF: John T. Edwards, III--Pay and Expenses
during erroneous appointment

498538

098538

- DIGEST:
1. Where Bureau of Reclamation erroneously appointed TVA employee to civil service position at Grand Coulee Dam, Washington, believing he had competitive status, and 13 months later took steps that led to proper appointment, collection of erroneous payment of total salary of \$18,677.76 paid during period of improper appointment may be waived. 5 U. S. C. § 5584.
 2. Where Bureau of Reclamation erroneously appointed TVA employee to civil service position at Grand Coulee Dam, Washington, and paid travel and relocation expenses from Wheeler Dam, Alabama, and other travel expenses pursuant to travel orders employee may retain reimbursement for such expenses since they were incurred pursuant to travel authorization and in anticipation of his actual appointment, subsequently approved.

This decision is rendered in response to a submission by an Assistant Commissioner of the Bureau of Reclamation, United States Department of the Interior, dated May 27, 1975, reference 520 953, requesting a waiver under Public Law 90-616, as amended, 5 U. S. C. § 5584 (Supp. IV, 1974), of collection of erroneous payments of salary totaling \$18,677.76 made to John T. Edwards, III. The Assistant Commissioner also requests our concurrence in the Bureau's proposal to forego collection of relocation and travel expenses paid to Mr. Edwards.

Mr. Edwards was employed by the Tennessee Valley Authority (TVA). He applied for a vacant position in the Bureau of Reclamation as a Powerplant Operator and was selected. His appointment was made effective on January 20, 1974, based on an initial determination that he held competitive status under Civil Service Commission rules and regulations. Incident to his appointment Mr. Edwards was authorized travel and transportation and relocation allowances for himself and his immediate family from Wheeler Dam, Alabama, to Coulee Dam, Washington. Mr. Edwards' relocation expenses were later reimbursed in the amount of \$5,538.50, the relocation being

B-184041

considered as a normal transfer of station not for the convenience of the employee. Travel expenses of \$284.70 were also paid to Mr. Edwards incident to a training program in December 1974, for which he also used a Government Transportation Request valued at \$158.74. It was subsequently discovered, and confirmed by the Civil Service Commission on February 3, 1975, that Mr. Edwards had not held competitive status at TVA and, therefore, that his appointment had been erroneous. The Bureau of Reclamation took immediate action to correct the error and secure a proper appointment through regular Civil Service procedures. As a result, Mr. Edwards was given a regular career-conditional appointment effective March 5, 1975. In the meantime Mr. Edwards had been paid salary in the total amount of \$18,677.76 during the period of January 20, 1974, to March 4, 1975, and waiver of collection of such amount is requested under 5 U. S. C. § 5584 (Supp. IV, 1974).

The submission also contains the following information:

"There is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or others involved in obtaining a waiver of this claim. Mr. Edwards acted in good faith in applying for the position at Coulee Dam and the fact that his appointment was erroneous was solely the result of administrative error. His services have been entirely satisfactory, and we believe any action to recover the erroneous payment of salary would be against equity and good conscience and would not be in the best interests of the United States."

It is clear from the above that Mr. Edwards performed services to the United States under color of an appointment from January 20, 1974, to February 3, 1975, and from then through March 4, 1975, at the request of agency officials pending his regular career-conditional appointment effective March 5, 1975. Under such circumstance we believe that Mr. Edwards is eligible for waiver of collection of overpayment of pay and allowances under the provisions of 5 U. S. C. § 5584 (Supp. IV, 1974). Accordingly, since there was administrative error and there was no fault on the part of Mr. Edwards, collection of the salary paid to him in the total amount of \$18,677.76 is waived.

B-184041

Section 5584 of title 5 specifically excludes consideration of travel and transportation expenses and allowances and relocation expenses payable under section 5724a of title 5 of the United States Code, as amended. However, we have held that an employee who has incurred such reimbursable expenses in accordance with travel orders prior to the effective date of the transfer has sufficiently complied with statutory and regulatory requirements to permit the payment of such expenses, when otherwise proper, prior to the actual transfer to the new position. 54 Comp. Gen. 993 (1975). In this connection, in the cited decision we also held that there is no authority to reimburse an employee for relocation expenses unless the transfer is authorized or actually effected and approved and that travel orders are generally recognized as being the authorizing document. Travel orders were issued to Mr. Edwards and he acted under that authority. Therefore, since Mr. Edwards incurred travel and transportation expenses and relocation expenses in anticipation of his actual appointment, subsequently approved, payment of his transfer expenses falls within the ambit of cognizable expenses, and we do not object to his retention of reimbursement therefor. As to the payment of travel expenses incident to Mr. Edwards' training in December 1974, such expenses were authorized in connection with his performance of duties under color of appointment and may also be retained.

R. F. Keller

Deputy Comptroller General
of the United States