

GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-156482

AUG 9 1979

Mr. Lawrence D. Morderosian
8 Brandonwood Drive
O'Fallon, Illinois 62269

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Dear Mr. Morderosian:

We are in receipt of your letters of May 20, 1979, with enclosures, and of July 16, 1979, requesting an opinion as to four questions relating to the per diem entitlements of an employee assigned to a position under the Intergovernmental Personnel Act (IPA) Pub. L. No. 91-648, title IV, § 402(a), 84 Stat. 1920 (January 5, 1971), codified at 5 U.S.C. §§ 3371-3376. Although a Comptroller General's decision is not being rendered on your submission (see 31 U.S.C. §§ 74 and 82d), we are providing the following information.

The four questions you present are:

"1. When a Federal Employee is on an Intergovernmental Personnel Act assignment, which is in a location that is in excess of 2,000 miles from his permanent duty station, and his permanent residence, can he penalized by his Permanent duty organization, from drawing per diem while he is on annual or sick leave?

"2. When this same Career employee attends and Official Hearing at his permanent home duty location, can his organization revert from the normal per diem daily rate to the IPA rate paid at the temporary location. Restated another way, the per diem rate at the temporary location was \$ 16.00 per day. The normal per diem rate, is lodging, motel, food, etc, accompanied by receipts. The Permanent Organization pays or allows only the temporary rate of \$ 16.00 per day, while the person has encumbered in excess of \$ 35.00 per day (provable expenses). In addition, the Organization allowed a total of 1 1/4 days per diem for total time, while the trip, for this Hearing had to be accomplished on a weekend for the Monday morning Hearing. A total

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of three days was needed to make the trip from St. Louis, to, Portland, Oregon.

"3. Can a person on an IPA assignment be penalized for a day of per diem because a holiday falls on a Saturday, or, Sunday, and the Friday or Monday are given as the day of holiday time off? In this case the BPA deducted a day of per diem for the work day that was a Federal holiday substitution.

"4. What is the GAO interpretation for Per Diem for a person who is on an IPA assignment? Is it the same as for a person who is on a Temporary Duty assignment from his permanent duty station? Or, is it to be interpreted in a different manner?"

You indicate that these general questions concern specific instances which arose while you were working under the IPA for the State of Missouri, on loan from your permanent Federal employer, the Bonneville Power Administration, Portland, Oregon.

Because the answer to question 4 affects your status in regard to per diem entitlements, we shall first provide some information concerning this question. In 57 Comp. Gen. 778, 781 (1978), we held that Federal employees who are authorized per diem while on IPA assignment are considered on temporary duty assignment and their permanent duty stations are not changed. Accordingly, the per diem is based on the employee performing temporary duty at the location of his IPA assignment.

Regarding question 1, it is necessary to distinguish between whether leave is taken for illness or other reason.

If the leave is taken due to illness then the Federal Travel Regulations (FPMR 101-7) para. 1-7.5b(1) (May 1973) is applicable. This regulation states:

"(1) Continuation of per diem. Whenever a traveler takes leave of absence of any kind because of being incapacitated due to his illness or injury not due to his own misconduct, the prescribed per diem in lieu of subsistence, if any, shall be continued for periods not to exceed

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14 calendar days (including fractional days) in any one period of absence unless, under the circumstances in a particular case, a longer period is approved." Compare B-176956, December 14, 1972, with B-185287, July 23, 1976.

Regarding the use of annual leave while on a temporary duty assignment, we have held that an employee who took a day of annual leave (not due to illness or injury) loses his entitlement to per diem for that day. B-185618, June 1, 1976. In this case, our reasoning was that:

"The law regarding payments for per diem when an employee takes leave of absence while he is in travel status away from his official station is well settled and is governed in general by Federal Travel Regulations (FPMR 101-7) para. 1-7.5(a)(1) (May 1973) which states:

"1-7.5. Interruptions of per diem entitlement.

"a. Leave and nonworkdays.

"(1) General. Except as provided in (2) and (3), below, if the time that leave of absence begins or terminates is within the traveler's prescribed hours of duty, per diem in lieu of subsistence expenses shall terminate at the beginning of the next quarter day or shall begin with the quarter day during which the leave of absence terminates. If leave of absence does not begin or terminate within the traveler's prescribed hours of duty, the traveler shall be entitled to per diem in lieu of subsistence expenses until midnight of the last day preceding the leave of absence and from 12:01 a.m. of the day following the leave of absence.'

"We have consistently applied the above regulation prohibiting the payment of per diem when a leave of

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absence is taken on a workday while the employee is away from his official duty station on temporary duty assignment. See B-166420, April 28, 1969, and B-168053, November 10, 1969."

Question 2 appears to be primarily governed by our recent decision in 57 Comp. Gen. 788, supra. This case held that an employee on IPA assignment who returns to his permanent headquarters may not receive per diem although he would be entitled to a travel allowance.

Finally, concerning question 3, an employee generally would be entitled to receive per diem for the holiday. However, there are exceptions to that general rule. B-171266, February 24, 1971, construing Standardized Government Travel Regulations, paragraph 6.3 (now contained in Federal Travel Regulations (FPMR 101-7) para. 1-7.d.(2) May 1973)).

We must emphasize that the above answers are only to be considered informational in a general sense and are not to be considered dispositive of the issues raised in your specific situation. In the absence of a complete record, including an agency report, we may not be more specific.

If you feel that the information supplied does provide you with a basis for seeking a formal resolution of your claims, we suggest that you file a claim with your permanent agency and have them forward it to our Claims Division; or, if you prefer, you may file a claim directly by sending it to:

Claims Division
U.S. General Accounting Office
Washington, D.C. 20548

For your further information, we are enclosing copies of the cited opinions and regulations, as well as the regulations pertaining to filing a claim in our Claims Division.

Sincerely yours,

David F. Engstrom

David F. Engstrom
Deputy Assistant
General Counsel

Enclosures