



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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CIVIL DIVISION

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Account

FEB 20 1970

Dear Mr. Kelly

Reference is made to your reply, dated September 6, 1969, to our letter of December 6, 1968, concerning possible overpayments of salary, per diem, and other travel allowances to Mr. Frank E. G. Weil and Mrs. Patricia Leo during their employment as consultants by the Office of Equal Health Opportunity, Office of the Surgeon General, Public Health Service.

With respect to Mr. Weil, our follow-up review confirmed the unusual timekeeping and reporting arrangements described in your letter, and we concur with your opinion that no overpayments were made to him. With respect to Mrs. Leo, however, our follow-up review indicated that she was overpaid a total of \$2,949--the amount we originally questioned--rather than the \$565 for which the Department has requested repayment. The principal differences between our computations and those by your staff of the overpayments to Mrs. Leo relate to allowances for travel expenses and per diem during the period April 15, 1966, through September 16, 1966.

Your letter stated that, for the period April 15, 1966, through September 16, 1966, Mrs. Leo was allowed travel expenses and per diem while away from home because she had been appointed as a consultant on an intermittent basis and the time and attendance reports reflected that she had worked as a consultant on an intermittent basis during the period.

The Assistant Chief of the Finance Branch, Office of the Surgeon General, advised us that, in computing the overpayments of \$565 for which repayment has been requested, he had assumed that Mrs. Leo was a consultant working on an intermittent basis during the period April 15, 1966, through September 16, 1966, because her appointment papers indicated that her services would be used intermittently. Our review of the time and attendance records for Mrs. Leo indicates that she served on a full-time basis and, therefore, was not entitled to receive the questioned payments for per diem and travel expenses during the cited period.

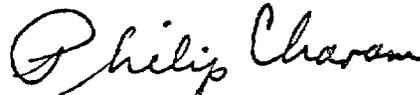
The rule is well established that consultants and experts who are hired on an intermittent, when-actually-employed basis, but serve on a regular full-time basis, may not be regarded as employed intermittently under section 5 of the Administrative Expenses Act of 1946,

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now 5 U.S.C. 5703. 27 Comp. Gen. 651 (1948), 30 id. 494 (1951), 35 id. 90 (1955). If, as indicated by our review, Mrs. Leo did, in fact, serve on a full-time, rather than intermittent, basis during the period April 15, through September 16, 1966, she is obligated to refund the amounts erroneously allowed her for per diem and transportation during such period. Those allowances do not constitute "pay" under Public Law 90-616, 5 U.S.C. 5584, and therefore may not be considered for waiver under that act. See 4 CFR 201.2(b).

Accordingly, we request that appropriate measures be taken to accomplish the refund of the amounts improperly paid to Mrs. Leo. Advice of the actions taken by the Department on this matter will be appreciated. If our working paper schedules relating to the questioned payments to Mrs. Leo would be of assistance, we will be pleased to make them available to you or your staff.

Sincerely yours,



Philip Chafam
Associate Director

The Honorable James F. Kelly
Assistant Secretary, Comptroller
Department of Health, Education,
and Welfare