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DECISION



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

FILE: B-194642

DATE: August 24, 1979

MATTER OF: Cecil M. Halcomb, et al. - [Reimbursement of New Appointees for Travel and Relocation Expenses]

personal name

DIGEST:

1. ^{2.} New appointees cannot be reimbursed travel and relocation expenses from Washington, D.C., to next duty station. Record indicates that agency erroneously indicated Washington as permanent duty station instead of temporary duty station while appointees were trained for 4 months. New appointees must bear expense of reporting to first official duty station and such duty station must be where major part of employees' duties are performed and where they are expected to spend greater part of time. Government is not responsible for unauthorized acts of its agents.
3. Erroneous payments must be collected.
2. ^{4.} New appointees were erroneously authorized house-hunting trips from training site to first official station. Agency should charge employees annual leave for time spent on house-hunting trips. If leave charges result in negative leave balances, there are overpayments of pay which may be considered for waiver under 5 U.S.C. § 5584. However, annual leave should not be charged for excess traveltime en route to appointees' first duty station required because of training.
3. ^{5.} New hires and transferees may be authorized subsistence at Washington, D.C., since it is a training site and not a permanent duty station. Rate should be that authorized by Federal Travel Regulations. In this connection Washington has been designated as high-rate geographic area.
4. ^{6.} New hires who traveled to training sites en route to first duty station may be authorized travel expenses in excess of what would have been incurred in traveling direct from employees' homes to their first duty station.

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5. Temporary quarters subsistence may not be paid incident to training. However, transferees would be entitled to that and other relocation allowances incident to permanent change of station.

AGC 00397

This action is in response to a request from John E. O'Grady, an authorized certifying officer of the Fish and Wildlife Service (FWS), U. S. Department of the Interior, for an advance decision. The request involves reimbursement of travel and relocation expenses incurred by Cecil M. Halcomb, Michael A. Lucckino, David O. Cartwright, and James V. Klett, new appointees in a non-manpower-shortage category. *personal notes*

The four employees were assigned to the FWS Washington, D. C., office for a period of about 4 months. During that period they spent about 2 weeks in Washington. The remainder of the time was spent in training at Glynco, Georgia. The main issue is whether Washington was their duty station for the purpose of determining their entitlement to reimbursement of travel and relocation expenses. The agency has advised that it has paid similar claims and others are pending. Thus, our decision will be dispositive of similar past and present claims.

The record shows that the FWS Division of Law Enforcement uses Special Agents for the enforcement of Federal laws relating to wildlife. To meet the manpower requirements of law enforcement, FWS hires trainee Special Agents. In addition to the new hires, some of the trainees are transferred from within the agency or from other Government agencies. All of the trainees are considered by the Division of Law Enforcement to be Washington office employees and that office is designated as their official duty station. Travel orders are issued to this effect.

The trainees are normally directed to report to the Washington office for processing of employment papers and to take the Oath of Office prior to reporting to the Department of the Treasury Federal Law Enforcement Training Center (FLETC), Glynco, Georgia. Occasionally they may be directed to report directly to FLETC, in which case personnel from Washington go to Glynco to complete the paperwork and administer the Oath of Office. Prior to hiring, all candidates are

told they will be sent to FLETC for a period of up to 4 months of training. A permanent duty location is to be determined prior to or upon completion of training.

Newly hired trainees are required to pay all of their expenses for travel to Washington. Trainees with prior continuous Government service are given orders transferring them to Washington at Government expense even though they have been informed that they will be assigned to a permanent duty station while at FLETC. In most cases such employees do not move their families until they are transferred again following training. All trainees, both new hires and transferees, pay their own subsistence expenses for the time spent in Washington, and receive a reduced per diem of \$4 per day while at the FLETC.

The certifying officer questions the designation of Washington as the first official duty station because this results in the new employees being told that they will be entitled to moving and other travel expenses associated with a permanent change of station after they have completed training and have been assigned to another post of duty. He also believes that due to the nature of the assignment, and the short period of time involved, the Washington office should be designated only as an administrative headquarters for all trainees.

The certifying officer also states that prior claims of this nature have been authorized and paid. Also, without submitting any vouchers he has summarized the facts of four additional cases. Therefore, he raises the following specific questions:

- "1. If a determination is made that erroneous payments have been made will it be necessary to research prior payments and initiate collection action to recover amounts improperly paid, and charge annual leave accounts for the official duty time used for house-hunting trips and/or travel enroute to the official duty station?
- "2. If your answer to the first question is yes, may an allowance be made to new hires for subsistence expenses incurred for the time spent in Washington, D.C.? If so, at what daily rate?

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- "3. If the answers to questions 1 and 2 are affirmative, are the transferees who were authorized PCS moves to Washington, D. C., entitled to subsistence? If not, are they entitled to temporary quarters under 5 USC 5724a(3) and FPMR 101-7.2-5.1?"

QUESTION 1

The location of an employee's permanent duty station presents a question of fact and is not limited by the administrative designation. 57 Comp. Gen. 147 (1977). Such duty station must be where the major part of the employee's duties are performed and where he is expected to spend the greater part of his time. 32 Comp. Gen. 87 (1952); Bertil Peterson, B-191039, June 16, 1978. There must be some duties beyond taking the oath, physical examination, or job training. 22 Comp. Gen. 869 (1943). Also, see 41 Comp. Gen. 371 (1967). In the instant case the certifying officer says that at the mid-point in training at the FLETC, the trainees are brought to the Washington office for 1 week. That time, together with the time spent when the trainee first reports for swearing in, is normally the total time spent in the Washington office. Thus, the facts indicate that the agency designation of Washington as the first official duty station is erroneous.

The general rule is that an employee must bear the expenses of travel to his first permanent duty station in the absence of a statute to the contrary. 53 Comp. Gen. 313 (1973); 30 id. 373 (1951). Also, new appointees may not be authorized reimbursement of expenses which are authorized in the case of transfers, such as residence sale and purchase expenses, cost of house-hunting trip, etc. This is so even in cases where new appointees may be allowed travel and transportation expenses by statute. See Federal Travel Regulations (FPMR 101-7) paras. 2-1.5f(4) and 2-1.5g(2)(c) (May 1973). Moreover, an agency may not authorize expenses associated with a transfer of station based on the improper designation of a temporary duty station. B-166181, April 1, 1969.

It is unfortunate that the agency officials exceeded their authority by erroneously determining the employees' official

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duty station and authorizing travel and relocation expenses, but it is well established that the United States can be neither bound nor estopped by the unauthorized acts of its agents. 54 Comp. Gen. 747 (1975); Kenneth P. Lindsley, Jr., B-194341, May 22, 1979; Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947).

In view of the above the employees' claims for reimbursement for travel and relocation expenses based on Washington being their official station may not be paid, and the amount advanced to cover such expenses should be collected back in the usual manner. Also, since the payment of similar claims in the past would be erroneous under the well-established principles stated above, it will be necessary to research prior payments and initiate collection action when erroneous payments are identified. Such payments may not be waived since 5 U.S.C. § 5584 (1976) specifically states overpayments of transportation expenses and allowances may not be waived.

Under the principles stated above the authorization of house-hunting trips was not proper. Therefore, annual leave should be charged for the time spent by employees on improperly authorized house-hunting trips. In this connection we have held that waiver of a charge to annual leave under the provisions of 5 U.S.C. § 5584 is appropriate when, as a result of a later adjustment to an employee's leave account, it is shown that the employee has taken leave in excess of that to which he is entitled, thereby creating a negative balance in his annual leave account. Otherwise, there is no overpayment which may be considered for waiver under the waiver statute since the error is susceptible to correction through reduction of the employee's positive leave balance. 56 Comp. Gen. 824, 828 (1977); B-176020, August 2, 1972. Thus, it will be necessary to determine on a case-by-case basis if the employee has sufficient annual leave to his credit to cover the adjustment. If, after adjustment, it is shown that the employee took leave in excess of that to which he was entitled (resulting in a negative balance which cannot be brought forward to the following year's account), an overpayment is created for that year which may be considered for waiver. However, annual leave should not be charged for excess traveltime en route to the official duty station required because of the training.

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Your first specific question is answered accordingly.

QUESTION 2

The new hires may be authorized subsistence at Washington since it is a training or temporary duty site, not a permanent duty station. 53 Comp. Gen. 313 (1973); 9 id. 359 (1930). The rate to be paid would be that authorized by the Federal Travel Regulations in effect at the time the employees performed such training. In this connection we point out that Washington has been listed as a designated high-rate geographic area since 1975. The new hires would also be authorized travel expenses in excess of what would have been incurred in going direct from the employee's home to his first duty station after completion of training. 22 Comp. Gen. 869 (1943), 10 id. 222 (1930).

Question number 2 is answered accordingly.

QUESTION 3

The transferees may be authorized subsistence to the same extent as the new hires as discussed in our reply to question number 2. Temporary quarters subsistence allowance may not be paid incident to training. However, as previously stated, the designation of Washington as a permanent duty station was in error. Thus, qualified transferees would be entitled to temporary quarters subsistence allowance incident to their permanent change of station. See Robert V. Brown, B-195281, May 24, 1976. Also, they may be authorized other relocation allowances incident to their transfer.

Question number 3 is answered accordingly.

GENERAL

The certifying officer questions the form of issuance of the travel orders. We would not object to any authorization which states the circumstances of travel as specifically as possible and the employees are not authorized reimbursement beyond the scope of the applicable statutes and regulations.

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Accordingly, the agency should take such action as necessary consistent with the foregoing.


Deputy Comptroller General
of the United States