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CHARLES A. BOWSER

Comptroller General of the United States

VACANT

Deputy Comptroller General
of the United States

HARRY R. VAN CLEVE

Acting General Counsel

July through September 1983

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B-202243 July 6, 1983

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
FINANCE CHARGES--MESSENGER SERVICE FEE*

Employee may not be reimbursed messenger service and tax certificate fees paid if those fees were paid to lender in connection with sale of employee's home at his old duty station. When facts and documentation presented with claim are insufficient to establish the exact nature of these fees, in absence of more specific information, amounts may not be reimbursed.

*OFFICERS AND EMPLOYEES--TRANSFERS--TEMPORARY QUARTERS--
SUBSISTENCE EXPENSES--COMPUTATION OF ALLOWABLE AMOUNT*

Reimbursable temporary quarters subsistence expenses are actual expenses shown to be reasonable or maximum amount specified, whichever is less (FTR para. 2-5.4c). Consequently, where agency considers that reasonable meal costs for first 10-day period were less than claimed and their allowance of reasonable amounts results in lower subsistence expense than maximum amount specified employee may not be reimbursed at maximum rate even though this is less than his itemized expenses since agency considers itemized expenses to be unreasonable.

*OFFICERS AND EMPLOYEES--TRANSFERS--TEMPORARY QUARTERS--
SUBSISTENCE EXPENSES--REASONABLENESS*

Employee itemized high meal costs on certain days in temporary quarters because he "stocked bare cupboard" with "paper plates, cups, towels, disposable eating utensils, soaps, spices," that were used during 30 days of temporary quarters. Amounts for such items were excessive to extent they inordinately raised average daily meal costs to \$34.50 for one person during 1st 10-day period of temporary quarters and

\$ 25.67 during entire 30-day period with his three dependents joining him final 3 days. Employee may be reimbursed only for reasonable meal costs actually spent (FTR para. 2-5.4a).

B-209873 July 6, 1983

OFFICERS AND EMPLOYEES--TRANSFERS--BREAK IN SERVICE--REEMPLOYED BY ANOTHER AGENCY--LIABILITY FOR RELOCATION EXPENSES

Employee who was separated involuntarily from Dept. of Interior in Lawton, Oklahoma, due to reduction in force is entitled to relocation expenses where within 1 year of his separation he was reemployed by Dept. of Education in Washington, D.C. Fact that employee's travel orders were issued subsequent to his move does not reduce that entitlement.

OFFICERS AND EMPLOYEES--TRANSFERS--TEMPORARY QUARTERS--SUBSISTENCE EXPENSES--ENTITLEMENT--ADMINISTRATIVE DISCRETION

Agency has discretion to approve temporary quarters subsistence expenses incident to permanent change of station and employee is not entitled to temporary quarters subsistence expenses allowance in absence of administrative authorization or approval.

TRANSPORTATION--HOUSEHOLD EFFECTS--ACTUAL EXPENSES--IN LIEU OF COMMUTED RATE

Employee who was authorized shipment of household goods incident to permanent change of station is limited to actual expenses of that shipment in this case. Since transportation by Govt. Bill of Lading would have been less costly than reimbursement under commuted rate system, 41 C.F.R. 101-40.206 requires that reimbursement be limited to low-cost Govt. mover. However, where agency failed to comply with requirement to make cost determination before shipment of household goods, employee may be reimbursed actual expenses not in excess of amount that would be allowable under commuted rate system.

B-209873 July 6, 1983 - Con.

TRAVEL EXPENSES--VEHICLES--USE OF PRIVATELY OWNED--SECOND VEHICLE--JUSTIFICATION

Agency properly denied employee reimbursement for use of two vehicles where employee lacked justification for use of second vehicle under para. 2-2.3e(a) of FTR. Either employee's or his spouse's vehicle could have transported both with luggage. Use of second vehicle may not be justified on basis of general statement that vehicles were used to transport personal belongings.

B-210121 July 6, 1983

SUBSISTENCE--PER DIEM--TEMPORARY DUTY--LONG-TERM ASSIGNMENTS

Employee of Bonneville Power Admin. (BPA) who was selected to fill vacant position with his duty station in Missoula, Montana, and temporary duty to be performed in Kalispell, Montana, may be paid per diem for duty he performed at Kalispell from July 27, 1981, through Aug. 3, 1982, pending relocation of District Office to Missoula, since evidence indicates Kalispell was temporary duty station. BPA intended that employee perform temporary duty at Kalispell for only short period of time but encountered difficulties in locating suitable office space. Further, employee had reason to expect that assignment would terminate at early date.

B-210170 July 6, 1983

STORAGE--HOUSEHOLD EFFECTS--TEMPORARY STORAGE--TIME LIMITATION--EXCEEDED

Employee received permanent change of station transfer from Washington, D.C., to Fort Sam Houston, Texas. As condition of employment, he was required to perform temporary duty overseas for approximately 120 days en route to Fort Sam Houston. Because of overseas assignment he found it necessary to store his household goods in excess of 60 days and seeks reimbursement on basis that he was entitled to nontemporary storage. Nontemporary storage for overseas assignments only applies when the assignment is for permanent duty. Where such assignment is not overseas nor to isolated U.S. location,

storage rights are governed by FTR para. 2-8.2c, which limits storage reimbursement to 60 days.

B-212032 July 6, 1983

TRAVEL EXPENSES--"PET" CARE--PROHIBITION

Employee of HUD seeks reimbursement for cost of boarding his pet in kennel while he was on temporary duty in Seattle, Washington. Kennel expenses may not be paid since neither 5 U.S.C. 5706 (1976), nor Ch. 1, Part 9 of FTR, FPMR 101-7 (Sept. 1981) authorize such entitlement. Absent statutory or regulatory authorization, kennel costs may not be reimbursed.

B-201382 July 7, 1983

OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--ACTUAL PURCHASE/SALE REQUIREMENT--LEGAL TITLE v. EQUITABLE OWNERSHIP

Transferred employee purchased new residence by way of installment agreement for assignment of beneficial interest in Illinois land trust. Upon execution of that agreement, equitable beneficial interest in land trust transferred to employee. Under Illinois law, assignment of beneficial interest in land trust amounts to sale or conveyance of property, and purchaser is treated as owner for most purposes. Assignment of beneficial interest in Illinois land trust through installment agreement effected "purchase" under 5 U.S.C. 5724a(a)(4) (Supp. IV 1980). Employee as purchaser acquired "title" under para. 2-6.1c of FTR and is entitled to be reimbursed for payment of his purchase expenses.

B-210374 July 8, 1983

TRAVEL EXPENSES--CIRCUITOUS ROUTES--PERSONAL CONVENIENCE--LEAVE

Employee of Dept. of Housing and Urban Development reclaims travel expenses disallowed by agency due to indirect routing in connection with official travel between Anchorage, Alaska, and Washington, D.C., on Sept. 27 and Oct. 1, 1982. Although expert opinion establishes that lower direct airfares were in existence at time

travel was performed, record supports finding that purchase price was quoted as lowest available fare on Sept. 17, 1982, when employee purchased ticket from Govt. designated travel vendor service. While this quotation was in error, employee should not be penalized in circumstances discussed in this case.

B-211449 July 11, 1983

OFFICERS AND EMPLOYEES--SERVICE AGREEMENTS--FAILURE TO FULFILL CONTRACT--INDEBTEDNESS UPHELD

Employee accepted transfer from Los Angeles, Cal. to Cambridge, Mass., and signed required 12-month service agreement. He resigned after 5 months and is therefore obligated to reimburse Govt. for his relocation expenses. Fact that employee had previously transferred from Cambridge to Los Angeles in position which gave him "transfer of function rights" back to Cambridge did not in itself entitle him to perform return travel to Cambridge at Govt. expense. Employee is required to sign and fulfill terms of new service agreement in connection with each permanent change of station within continental U.S.S. See para. 2-1.5a(1)(a) of FTR.

B-208155 July 12, 1983

OFFICERS AND EMPLOYEES--TRANSFERS--MANPOWER SHORTAGE EMPLOYEES

Claimant transferred from position in Office of Architect of Capitol to one in Dept. of Energy as manpower shortage category appointee. There was no transfer between agencies for purposes of 5 U.S.C. 5724a because Office of Architect of Capitol is not included within definition of "agency" under 5 U.S.C. 5721. Therefore, claimant is limited to recovering expenses allowed under 5 U.S.C. 5723 for manpower shortage positions, and he is not entitled to additional relocation expenses allowable under 5 U.S.C. 5724a.

B-209727 July 12, 1983

MILAGE--TRAVEL BY PRIVATELY OWNED AUTOMOBILE--INCIDENT TO TRANSFER--MORE THAN ONE AUTOMOBILE

Employee received inter-agency permanent duty transfer from California to Washington, D.C. His travel authori-

zation provided for permanent change of station (PCS) transfer travel for himself and immediate family using two privately owned vehicles. Employee returned to California after reporting for duty for purpose of assisting family in their move to new station. Under FTR Ch.2, Part 2, basic travel and transportation entitlement of employee on PCS transfer is that he and each family member is entitled to single one-way trip to new station. Since employee had already performed travel to his new duty station, and one of two vehicles in question would accommodate other four members of his family, constructive mileage reimbursement is limited to one vehicle at rates prescribed in FTR par 2-2.3(b).

OFFICERS AND EMPLOYEES--TRANSFERS--TRANSPORTATION FOR HOUSE HUNTING--DISALLOWANCE--NO RETURN TO OLD STATION

Employee received inter-agency permanent duty transfer from California to Washington, D.C. His travel authorization provided for house-hunting trip. Employee made unaccompanied trip in advance of reporting for duty at new station, but chose not to return to old station before reporting for duty. Under FTR par. 2-4.1, reimbursement for house-hunting travel requires that round-trip be completed before reporting for duty at new station. House-hunting per diem would still be payable for full period authorized even if employee reported for duty instead of returning to old duty station. However, where return travel was not performed before reporting, travel actually performed is regarded as employee's permanent change of station travel and will be so reimbursed.

OFFICERS AND EMPLOYEES--TRANSFERS--TEMPORARY QUARTERS--ENTITLEMENT

Employee received inter-agency permanent duty transfer from California to Washington, D.C. Employee reported for duty at new station Mar. 3, 1980, but his family did not arrive until June 15, 1980. Employee was granted 24 days for temporary quarters subsistence expenses. Entitlement to 24 consecutive days temporary quarters subsistence expenses runs concurrently for all family members, and cannot include days during which permanent

change of station travel is being performed. Here, since family traveled from June 6, 1980, when old residence was vacated, until June 15, 1980, and then occupied temporary quarters until July 1, 1980, reimbursement is limited to period of June 15, to July 1, 1980.

(B-210297, July 12, 1983--see next page)

B-210331 July 12, 1983

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
DUTY STATION WITHIN UNITED STATES REQUIREMENT*

Employee was authorized permanent change of station (PCS) from Washington, D.C., to Mexico. He was not authorized to incur real estate expenses at Govt. expense. Employee sold residence at old duty station prior to reporting for duty at new post in Mexico on July 29, 1978. Agency authorized employee transfer in Nov. 1978 to Canal Zone because Govt. of Mexico would not grant accreditation for claimant to establish residency in Mexico. Fact that Mexico would not grant accreditation does not change his status to temporary duty. Claimant is not entitled to reimbursement of real estate expenses incurred incident to sale of Maryland residence in connection with PCS to Mexico, since both old and new duty stations were not located within U.S., its territories and possessions, Puerto Rico, or Canal Zone.

B-211287 July 12, 1983

VEHICLES--RENTAL--PERSONAL CONVENIENCE

Employee seeks reimbursement for automobile rental expenses he incurred while on temporary assignment. His use of vehicle for travel to and from area air terminal is only portion of claim that constitutes authorized travel. Otherwise, vehicle was used for personal convenience of employee and not on official business. He is, therefore, entitled only to constructive cost of round-trip fare between his lodging and air terminal by way of airport limousine service, or otherwise in accordance with applicable reg.

B-210297 July 12, 1983

*OFFICERS AND EMPLOYEES--TRANSFERS--ATTORNEYS--
HOUSE PURCHASE AND/OR SALE*

IRS employee purchased new residence and seller agreed to pay closing costs. Despite this contract provision, employee paid most of closing costs and claims attorney fees in connection with transaction. In accordance with George W. Lay, 56 Comp. Gen. 561 (1977), employee is entitled to reasonable attorney fees for advisory and representational services rendered in connection with purchase of residence at new duty station if charges are customarily paid by purchaser of residence in locality involved and are within customary range of charges for such services in locality.

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
INSURANCE--HOMEGUARD SERVICE CONTRACT*

IRS employees may not be reimbursed cost of 1- year Homeguard Service Contract incurred upon sale of his home incident to transfer from Columbus, Ohio, to Cincinnati, Ohio. Homeguard Contract is insurance against seller's contingent liability for defects in home and hence is not allowable under para. 2-6.2d, FTR(FPMR 101-7), which precludes reimbursement of insurance expenses.

B-211341 July 12, 1983
OFFICERS AND EMPLOYEES--TRANSFERS--TEMPORARY QUARTERS--
TIME LIMITATION

Employee transferred to VA Medical Center in Canadaigua, New York, may not be reimbursed for temporary quarters and subsistence expenses incurred more than 9 months after he reported for duty at his new official station. Since record does not establish that employee's family vacated residence at his old duty station, his claim for reimbursement must begin within 30 days following his arrival at new duty station.

B-206757 July 13, 1983
OFFICERS AND EMPLOYEES--PART-TIME--FEDERAL EMPLOYEES
PART-TIME CAREER ACT OF 1978--HEALTH BENEFITS CONTRIBUTIONS

Employee requested conversion to part-time employment prior to effective date of Fed. Employees Part-Time Career Employment Act of 1978. Act's implementing regs. require proration of Govt.'s contribution to health benefits plans of part-time employees appointed on or after Apr. 8, 1979, but continue full Govt. contribution for employees serving on part-time basis before that date. Although agency did not formally approve employee's conversion to part-time status until after Apr. 8, 1979, employee began to serve on part-time basis, with express approval of District Office officials, more than month before Apr. 8, 1979, deadline. Therefore, we conclude that she is entitled to continue receiving full Govt. contribution to her health benefits plan.

B-210867 July 13, 1983
TRANSPORTATION--HOUSEHOLD EFFECTS--HOUSE TRAILER SHIPMENTS,
ETC.--SEPARATE SHIPMENTS OF HOUSEHOLD EFFECTS, ETC. AND
HOUSE TRAILER

Transferred employee, who shipped 4,250 lbs. of household goods and personal effects separately from his mobile home because carrier required that mobile homes over 70 feet long shipped by lowboy trailer be empty, may not be reimbursed for cost of that shipment. Allowance for movement of mobile home is in lieu of allowance for shipping household goods.

B-212089 July 13, 1983

*TRANSPORTATION--HOUSEHOLD EFFECTS--TIME LIMITATION--
EXTENSION--APPLICABILITY*

Employee is not entitled to reimbursement of expenses of transporting household goods in connection with his permanent change of station from Hartwell, GA, to Calhoun Falls, S.C., on Nov. 12, 1978, since they were not transported within 2 years of date on which he reported for duty at new official station as required by FTR para. 2-1.5a(2) (May 1973). Amendment to FTR para. 2-1.5a(2), allowing 1-year extension of 2-year time limitation, when 1-year extension of 2-year period allowed for sale of residence is granted, is applicable only to employees whose entitlement period had not expired prior to Aug. 23, 1982. Since claimant's entitlement period expired prior to that date, amendment is not applicable to his claim.

B-208406 July 15, 1983

*OFFICERS AND EMPLOYEES--PROMOTIONS--RETROACTIVE--
ENTITLEMENT*

Ten employees of Merit Systems Protection Bd. were selected for promotion effective Dec. 13, 1981. Due to budget cuts, Managing Director announced on Dec. 16, that all promotions would be suspended. These 10 promotions were not properly revoked before they became effective and are retroactively effective on Dec. 13, 1981.

Eight employees of Merit Systems Protection Bd. were selected for promotion effective Dec. 27, 1981, or later. Due to budget cuts, Managing Director announced on Dec. 16 that all promotions would be suspended. These promotions were effectively revoked, even though written notification was not issued until Dec. 29. There is no basis to allow retroactive promotions for these eight employees.

B-209768 July 15, 1983
COMPENSATION--OVERTIME--FAIR LABOR STANDARDS ACT--CLAIMS--
SETTLEMENT AUTHORITY

GAO will accord great weight to OPM's administrative determination as to employee's entitlements under Fair Labor Standards Act. We will not disturb OPM's determinations unless clearly erroneous. 60 Comp. Gen. 354 (1981).

COMPENSATION--OVERTIME--FAIR LABOR STANDARDS ACT--FAIR
LABOR STANDARDS ACT v. OTHER PAY LAWS

Although time spent taking physical examination that is required for employee's continued employment with agency shall be considered hours of work under Fair Labor Standards Act, such time is not hours of work under 5 U.S.C. 5542.

COMPENSATION--OVERTIME--FAIR LABOR STANDARDS ACT--HOURS
OF WORK REQUIREMENT--PAID ABSENCES--NOT HOURS OF WORK

Absences with pay such as annual leave are not periods of work for purposes of Fair Labor Standards Act entitlement.

COMPENSATION--OVERTIME--FAIR LABOR STANDARDS ACT--HOURS
OF WORK REQUIREMENT--PHYSICAL EXAM

Employee was ordered to undergo fitness for duty examination which involved tests in hospital for period of 3-1/2 days, and he claims overtime compensation for that period. Under 5 C.F.R. 551.425(b) time spent taking physical examination that is required for employee's continued employment with agency shall be considered hours of work under Fair Labor Standards Act, 29 U.S.C. 201 et seq. However, when employee is in hospital for examination, only actual examination time is credited as hours during which employee is eating, sleeping, etc., are not creditable work hours.

B-211691 July 18, 1983

COMPENSATION--PROMOTIONS--DELAYED--"BACK PAY"

Promotion of attorney-adviser from GS-13 to GS-14 was delayed 9 months by Personnel Office's interpretation of promotion moratorium. Employee is not entitled to retroactive promotion and backpay because promotion was discretionary, employee did not have right to promotion granted by statute or Reg., and there was no nondiscretionary policy, Reg., or agreement entitling him to promotion.

OFFICERS AND EMPLOYEES--PROMOTIONS--DISCRIMINATION ALLEGED

Employee alleges discrimination on basis of disparate treatment of similarly situated employees among offices within same Fed. agency, as result of differing interpretations of promotion moratorium. Employee's claim on this basis is denied since there is no requirement that similarly situated employees be treated indentially as to promotion actions.

B-211626 July 19, 1983

SUBSISTENCE--PER DIEM--TEMPROARY DUTY--LONG-TERM ASSIGNMENTS

Employee was paid for his travel and subsistence expenses while allegedly on temporary duty in Washington, D.C., from Oct. 1981 to April 1983. Whether particular location should be considered temporary or permanent duty station is question of fact to be determined from orders directing assignment, duration of assignment, and nature of duties to be performed. Under facts and circumstances of this case, we conclude that employee's permanent duty station was actually Washington, D.C. He is not entitled to temporary duty expenses and his agency is directed to determine his entitlement to transfer expenses and to recoup any overpayments.

B-208794 July 20, 1983

SUBSISTENCE--ACTUAL EXPENSES--ITEMIZATION OF ACTUAL FOOD EXPENSES--REASONABLE

Employees were authorized actual subsistence expenses for first 30 days of their temporary duty assignment in Westwood, California. Employees obtained lodging at monthly rate and at significant savings over average daily rate charged for other available lodging. Lodgings savings resulted in proportionally higher meal expenses than agency anticipated, causing agency to question reasonableness of employees' meal expenditures. Employees are entitled to reimbursement only for reasonable expenses for meals since traveler is required to act prudently in incurring such expenses. Here, agency had established guidelines limiting amount that employees properly could spend on meals, and employees' expenditures were within those guidelines. Since there is no further evidence that meal expenses claimed were extravagant or unreasonable under circumstances, employees may be reimbursed for their expenditures.

B-211345 July 21, 1983

DEBT COLLECTIONS--WAIVER--CIVILIAN EMPLOYEES--COMPENSATION OVERPAYMENTS--APPOINTMENT TO ERRONEOUS STEP IN GRADE

Employee was erroneously overpaid salary due to agency's mistake in setting step within his grade upon his transfer from wage grade position to General Schedule position in different location. Waiver is granted since record does not establish knowledge on employee's part as to step in which he should have been placed, which would be sufficient to support finding of fraud, fault, misrepresentation or lack of good faith on his part. Furthermore, since employee was not in position to know and understand pay Regs., he was not at fault for failing to recognize that he had been improperly converted from wage grade pay scale to General Schedule, particularly when there was no discrepancy between step and pay rates listed on SF-50 effecting his transfer and pay he was actually receiving.

B-211856 July 21, 1983

*DETAILS--COMPUTATION--HIGHER GRADE DUTIES ASSIGNMENT--
EXCESSIVE PERIOD--COMPUTATION*

Dept. of Army may correct backpay award to employee where effective date of backpay entitlement, granted under holdings in Turner-Caldwell, 55 Comp. Gen. 539 (1975), sustained in 56 Comp. Gen. 427 (1977), was erroneously calculated. Turner-Caldwell III, 61 Comp. Gen. 408 (1982), which overturned prior decisions, applies by its terms only to claims which had not been decided or settled prior to May 25, 1982, and claim in this case was settled in 1981. However, employee's contention that agency erred in determining date position was established constitutes separate claim which was not settled prior to May, 25, 1982, and therefore is barred by Turner-Caldwell III.

B-210572 July 26, 1983

*OFFICERS AND EMPLOYEES--TRANSFERS--MISCELLANEOUS EXPENSES--
LICENSE FEES--TEACHER CERTIFICATION FEE*

Under FTR para. 2-3.1, miscellaneous expenses incurred because of transfer may be reimbursed. Employee may be reimbursed for (1) his wife's teacher certification fee as license fee, and (2) his wife's teacher course tuition fee which was required as condition precedent to issuance of teacher certification, where employee's wife had been certified teacher in state in which old duty station was located.

*OFFICERS AND EMPLOYEES--TRANSFERS--NONREIMBURSABLE ITEMS--
MATTERS OF PERSONAL PREFERENCE*

Under FTR para. 2-3.1, miscellaneous expenses incurred because of transfer may be reimbursed, but those costs incurred for reasons of personal taste or preference and not required because of move may not be reimbursed. Employee may not be allowed reimbursement of medical records transfer fee, since transmittal fees are reimbursable only when subject of transmittal is reimbursable expense, and expenses relating generally to medical arrangements of transferred employees are not reimbursable.

B-210687 July 26, 1983

*TRANSPORTATION--HOUSEHOLD EFFECTS--WEIGHT LIMITATION--
EXCESS COST LIABILITY*

Incident to transfer of duty station, employee shipped household goods exceeding statutory maximum of 11,000 lbs. by 4,800 lbs. He has repaid Govt. for only 2,000 lbs. of excess because oral estimate he received from carrier's agent was only 13,000 lbs., and he did not receive later written estimate of 15,000 lbs. Since maximum payable by Govt. under 5 U.S.C. 5724(a) is 11,000 lbs. regardless of extenuating circumstances, employee must repay cost of entire excess, less shipping cost of any professional books and papers properly proven to have been included with household goods.

*TRANSPORTATION--HOUSEHOLD EFFECTS--WEIGHT LIMITATION--
PROFESSIONAL BOOKS, ETC.--EXCEPTION TO GENERAL RULE*

Professional books and papers included within shipment of household goods may be administrative expense of employing agency exclusive of 11,000-lb. maximum weight limitation payable by Govt. for transportation of household goods. But professional books and papers must, in accordance with para. 2-8.2a-1 of FTR, be inventoried with proper weight determination and certified by appropriate official at new duty station as necessary shipment of items that Govt. would otherwise have to obtain at its expense.

B-211572 Aug. 1, 1983

*OFFICERS AND EMPLOYEES--TRANSFERS--GOVERNMENT v. EMPLOYEE
INTEREST--MERIT PROMOTION TRANSFERS--RELOCATION EXPENSES--
ENTITLEMENT*

Employee who requested transfer from Philadelphia to Pittsburgh, Pa. claim relocation expenses on grounds that her transfer was in interest of Govt. Although new position was advertised under vacancy announcement pursuant to agency's merit promotion program, position was at lower grade than her previous position in Philadelphia, and had no greater promotion potential. Thus, her appointment was exception to merit promotion program under applicable regs.

Under these conditions, GAO will not disturb agency's determination that employee's transfer was primarily for her own convenience and not in Govt.'s interest.

B-208811 Aug. 2, 1983

DEBT COLLECTIONS--WAIVER--CIVILIAN EMPLOYEES--COMPENSATION OVERPAYMENTS--EMPLOYEE UNAWARE OF OVERPAYMENT

Fourteen employees of Bureau of Engraving and printing were erroneously paid hazardous duty pay at rate of 25 percent when they should have been paid environmental pay differential of 4 percent. Record shows that employees had no knowledge that they were incorrectly paid, since Standard Form 50 placing them in their positions did not show correct rate of environmental differential pay, employees pay varied because of overtime work, and not all of their work qualified for environmental pay. Under these circumstances we hold that waiver of repayment is granted since employees were not at fault for overpayments, and collection would be against equity and good conscience and not in best interests of U.S. 5 U.S.C. 5584.

DEBT COLLECTIONS--WAIVER--STATUTES OF LIMITATION

Office of Audit and Internal Affairs of Bureau of Engraving and Printing noticed in Oct. 1978 that 14 employees of Ink Manufacturing Branch had been overpaid environmental differential pay. Although overpayments were stopped, inadequate administrative controls resulted in Office of Financial Management losing track of matter until administrative report was filed on Aug. 17, 1982. Record shows that amount of overpayment to each employee was not definitely determine prior to filing of report. Employees involved were never informed that they had been overpaid. Giving benefit of doubt to employees, we hold that date appropriate official definitely discovered that overpayments had been made is date of administrative report. Accordingly, Bureau's request for waiver of repayment of erroneous payments is timely filed.

B-210748 Aug. 3, 1983
OFFICERS AND EMPLOYEES--HEALTH INSURANCE--CONTRIBUTIONS--
OVERDEDUCTION--REIMBURSEMENT

Although employee enrolled in low option health benefits plan at time of appointment, payroll deductions were made at high option rate, resulting in underpayment of compensation. Employee is entitled to reimbursement of premiums erroneously deducted from her pay, subject to 6-year limitation on claims in 31 U.S.C. 71a.

STATUTES OF LIMITATION--CLAIMS--CLAIMS SETTLEMENT BY GAO--
SIX YEARS AFTER DATE OF ACCRUAL

Excessive health benefits premiums were erroneously deducted from employee's pay from Mar. 1968 until Sept. 1982. Employee claims refund of excessive premiums for entire period. Her claim was received in GAO on Feb. 9, 1983. Under 31 U.S.C. 71a, claim bearing signature and address of claimant must be received in GAO to stop running of 6-year statutory limitation on filing of claims against U.S. Earlier filing of claim with employing agency does not stop running of statute. Consequently refund claim is barred for period before Feb. 9, 1977.

B-206704 Aug. 8, 1983
TRANSPORTATION--HOUSEHOLD EFFECTS--WEIGHT LIMITATION--
EXCESS COST LIABILITY--CONSTRUCTIVE WEIGHT SUBSTITUTION--
WEIGHT CERTIFICATE INVALID

In James C. Wilson, 62 Comp. Gen. 19 (1982), we stated that to correct error resulting from invalidation of weight certificates constructive weight of household goods shipment should be computed and substituted for incorrect actual weight. However, where constructive weight was unobtainable, and mover's evidence supporting revised weight determination, which was unrebutted by employee, was only evidence of record on correct weight of shipment, and that weight was not unreasonable, we held that excess weight charges should be computed on revised weight. In requesting reconsideration employee has not met his burden of showing material mis-

take of law or fact in our prior decision, and has presented no further evidence as to weight of his household goods.

B-210917 Aug. 10, 1983

*OFFICERS AND EMPLOYEES--PROMOTIONS--TEMPORARY--DETAILED
EMPLOYEES--HIGHER GRADE DUTY ASSIGNMENT--AGENCY REGULATIONS*

Agency asserts that its internal regs. which establish policy to make temporary promotions for details mandatory after 30 days, was based on our early Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) sustained at 56 Comp. Gen. 427 (1977). Therefore, agency argues that after Turner-Caldwell III, 61 Comp. Gen. 408 (1982), which overruled prior Turner-Caldwell decisions, agency's policy changed and its regs. did not require such temporary promotions. However, reading of applicable agency regs. show that no changes were made, and, therefore, we conclude on basis of agency's regs. that nondiscretionary policy to grant temporary promotions for employees detailed to higher-graded position for more than 30 days existed. Accordingly, employee may be granted retroactive temporary promotion beginning 31st day of detail.

B-209652 Aug. 12, 1983

LEAVES OF ABSENCE--ADMINISTRATIVE LEAVE--AUTHORITY

Employee chose not to work while her discontinued service retirement papers were being processed, even though she knew that planned transfer of function had been postponed and that there was doubt as to her eligibility to retire. After 5 weeks, she returned to work and was placed on leave without pay (LWOP) for 5-week period. Her request that LWOP be changed to administrative leave is denied since there is no authority for granting administrative leave for such purpose or for such extended period.

*OFFICERS AND EMPLOYEES--BACK PAY ACT--APPLICABILITY--
NO UNJUSTIFIED OR UNWARRANTED PERSONNEL ACTION*

Employee chose not to work while her discontinued service retirement papers were being processed, even though she knew that planned transfer of function had been postponed and that there was doubt as to her eligibiity to retire.

After 5 weeks off duty, she returned to work and was placed on LWOP for 5-week period. She is not entitled to backpay for 5 weeks she did not work under Back Pay Act, 5 U.S.C. 5596, since there was no unjustified or unwarranted personnel action by agency.

B-211262 Aug. 12, 1983

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
LOAN DISCOUNT FEES*

Transferred employee claims reimbursement of loan discount fee and VA buy down charge paid in connection with sale of his old residence. Regardless of their treatment for tax purposes or their characterization under Truth in Lending Act, payment is precluded by prohibition in FTR para. 2-6.2d against reimbursement of points and mortgage discounts.

B-208293 Aug. 15, 1983

*LEAVES OF ABSENCE--ANNUAL--ACCRUAL--CREDITING BASIS--
ERRONEOUS*

Employee's annual leave account was erroneously overcredited due to agency's error in calculating service computation date and, thus, number of hours of leave she was to accrue each pay period. Waiver of Govt's claim to overcredited annual leave is denied since there was positive balance remaining in employee's leave account after agency adjusted account to correct its administrative errors. Although agency erred in overcrediting leave and in delaying correction of error, employee was also at fault for failing to inquire as to status of correction.

B-207997.2 Aug. 23, 1983

*COMPENSATION--REMOVALS, SUSPENSIONS, ETC.--BACKPAY--
OVERTIME, ETC. INCLUSION*

FAA questions overtime entitlement of certain air traffic controllers who were fired but later restored retroactively. Although FAA contends there was no nondiscretionary policy governing assignment of overtime, our decs. concerning overtime pay in backpay awards do not require such

policy. Overtime controller normally would have worked during period of separation should be determined by FAA based upon prior overtime payments or upon overtime paid to similar employees who were not removed, and must be included in backpay award.

B-210604 Aug. 24, 1983

OFFICERS AND EMPLOYEES--TRANSFERS--ATTORNEY FEES--HOUSE PURCHASE AND/OR SALE

Employee retained attorney to facilitate transfer of marketable title when seller's death prior to closing resulted in reversion of property being purchased to trust and subjected it to claims for death-related taxes and construction liens. Since services were necessary to transfer of title and customarily paid for by purchaser within meaning of Matter of Lay, 56 Comp. Gen. 561 (1977), fees may be reimbursed insofar as number of hours billed is reasonable for particular complications involved and hourly rate charged is within customary range of charges for such services.

B-211166 Aug. 25, 1983

DEBT COLLECTIONS--WAIVER--CIVILIAN EMPLOYEES--COMPENSATION OVERPAYMENTS--EMPLOYEE UNAWARE OF OVERPAYMENT

Upon termination of employee's temporary promotion from grade GS-6, step 4, to grade GS-7, step 3, agency erroneously established her step rate at step 7 of grade GS-6, based on highest previous rate earned during temporary promotion. Under agency regs., employee would have been returned to her former grade and step. Agency's error was compounded when employee was later temporarily promoted from grade GS-6, step 7, to grade GS-7, step 6 (should have been step 3). Waiver of resulting overpayment is granted since there is no evidence that employee was aware she had been placed in wrong step of grade, and since personnel records furnished to employee did not disclose error.

B-208397 Aug. 29, 1983

COMPENSATION--BACKPAY--RETROACTIVE PROMOTIONS--CLAIM DENIED

Office of Personnel Management granted variance to time-in-grade requirement approximately 7 months after request

was made by SBA. Error by SBA caused employee to receive pay rather than suffer reduction in pay. Action by OPM in granting variance was not erroneous and allowed claimant to receive promotion to GS-11 approximately 2 months earlier than he would have under normal promotion procedures. Therefore, employee is not entitled to retroactive promotion and backpay under Back Pay Act, 5 U.S.C. 5596 (1976), which provides relief to employees who have suffered unjustified or unwarranted personnel action directly resulting in withdrawal, reduction, or denial of pay.

OFFICERS AND EMPLOYEES--PROMOTIONS--RETROACTIVE--ENTITLEMENT--ADMINISTRATIVE ERROR

Small Business Administration employee claims entitlement to retroactive promotion and backpay since promotion for which he was recommended was delayed by order of OPM while investigation was conducted concerning errors made by SBA in administration of its Cooperative Education (COOP) Program. SBA committed administrative error when it noncompetitively converted claimant, COOP student, from GS-5 grade level to career-conditional position at GS-7 level, 3 months after his promotion to GS-5 level. Par. 2-15c(4), FPM, ch. 308, requires that student must have served at GS-5 level for 12 calendar months.

B-210474 Aug. 29, 1983

OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--DETERMINATION OF PRO RATA REIMBURSEMENT--RELATIONSHIP OF ACREAGE TO RESIDENCE SITE

Transferred employee, who purchased 100-acre parcel of land including 5-acre residence site, may not include additional 1-1/2 acres for access road across remainder of his property to determine how much acreage reasonably relates to residence site for purpose of determining his entitlement to pro rata reimbursement of real estate purchase expenses. However, his 5-acre riverfront residence site is worth more than average 5-acre parcel of land in county and his pro rata reimbursement for fees assessed on basis of purchase price should be based on higher value of comparable riverfront properties.

B-208706 Aug. 31, 1983

LEAVES OF ABSENCE--CIVILIANS ON MILITARY DUTY--ACTIVE
DUTY, ETC., SERVICE

Special Agents of FBI who have been designated Key Federal Employees and are members of Standby Reserve are entitled to military leave under 5 U.S.C. 6323(a) when they are on active duty for training. Employees may not use or be charged annual leave for such duty unless period of active duty for training exceeds military leave available to employee.

B-212354 Aug. 31, 1983

FRAUD--FALSE CLAIMS--SEVERABILITY RULE--SUBSISTENCE
EXPENSES

Fraudulent claim for lodgings or meals taints entire claim for actual subsistence expense allowance for any day on which fraudulent claim is submitted. Therefore, employee's claim for temporary quarters subsistence expenses for 30 days is denied in its entirety since employee misrepresented his actual daily lodging expenses and his daily food expenses.

B-202864 Sept. 2, 1983

COMPENSATION--OVERTIME--REGULAR--DURING MILITARY LEAVE--
EVIDENCE SUFFICIENCY

Decision denying claim of employee for overtime compensation for period he was away on military leave is reversed. Claim was denied because although overtime was regularly scheduled, it was not clear that employee would have been required to work overtime involved. Newly submitted evidence shows that employee would have been required to work and his claim is therefore allowed.

B-210442 Sept. 2, 1983

COMPENSATION--OVERTIME--INSPECTIONAL SERVICE EMPLOYEES--
CUSTOMS INSPECTORS--SUNDAY AND HOLIDAY COMPENSATION--
ADDITIONAL OVERTIME COMPENSATION ENTITLEMENT

Customs Service requests decision whether inspector's overtime assignments from 9:30 p.m. to 10:30 p.m. Sunday, and from 12:45 a.m. to 1:45 a.m. Monday, may be

considered continuous so as to limit his overtime entitlement to 1/2 day's pay for each assignment. We conclude that under current Customs regs. Monday assignment is not continuation fo Sunday assignment, and inspector is entitled to 1-1/2 days' pay for Monday assignment.

B-212278 Sept. 2, 1983

FOREIGN SERVICE--TRANSPORTATION--HOUSEHOLD EFFECTS--TIME LIMITATION, ETC.

Spouse of Foreign Service officer who died while stationed in Washington, D.C., was entitled to transportation of her household effects to place where family will reside, but by reg. such transportation was required to take place within maximum of 18 months after officer's death. Widow may not be granted further extension of time by action of Committee on Exceptions to Foreign Service Travel Regs.

B-210561 Sept. 13, 1983

TRANSPORTATION--HOUSEHOLD EFFECTS--WEIGHT LIMITATION--EXCESS COST LIABILITY

Employee of Dept. of Energy who moved his household goods incident to transfer and knew he would be liable for excess weight charges, claims difference between overweight charges as represented to him based on rates effective in May and overweight charges actually charged Dept. under new rates effective in June when shipment was made. Overweight charges mover billed Dept. were correct and mover was required by Dept. Interstate Commerce Act to collect them. Since Dept. was required by FTR to collect from employee any excess weight charges it paid, there is no basis for allowance of claim.

B-210928 Sept. 13, 1983

TRAVEL EXPENSES--MISCELLANEOUS EXPENSES--LOCKSMITH FEE

Employee requests reconsideration of prior decision denying claim for locksmith fee where employee locked himself out of rental car while on temporary duty. There is no authority for reimbursement of this claim since employee has not shown expense was essential to transaction of official business.

B-212723 Sept. 20, 1983

CIVIL RIGHTS ACT--TITLE VII--DISCRIMINATION COMPLAINTS--
INFORMAL AGENCY SETTLEMENT--WITHOUT DISCRIMINATION FINDING--
BACKPAY

Employee filed discrimination complaint when he was not selected for promotion. Informal settlement of complaint without any admission of discrimination contained lump-sum monetary award to employee. Since award is related to backpay and is less than maximum amount recoverable if discrimination had been found, settlement may be implemented. See B-206014, March 7, 1983, 62 Comp. Gen. 239 Only taxes and other mandatory deductions are required to be withheld from this award.

B-207030 Sept. 21, 1983

TRAVEL EXPENSES--TEMPORARY DUTY--STATION LATER DESIGNATED
AS PERMANENT

Temporary employee was offered and accepted permanent position with Forest Service in Alaska while serving in Cal. Appointment was deferred due to hiring freeze of Jan. 1981. He was then offered temporary position in Alaska pending lifting of freeze. He resigned his position, had break in service from March 14 to 25, 1981, and traveled at his own expense to accept temporary appointment. After hiring freeze was lifted, employee was again offered permanent appointment. He accepted and his temporary appointment was converted to permanent one. Claimant, because of break in service, may be reimbursed travel and transportation expenses as new appointee in traveling to accept temporary position at post of duty outside continental U.S. under 5 U.S.C. 5722 (1976), even though travel authorization has not been issued.

B-209942 Sept. 23, 1983
COMPENSATION--DOWNGRADING--CLAIM FOR HIGHER GRADE SALARY

Claimants held GS-9, step 5, positions and voluntarily accepted different GS-7, step 10, positions in order to enter merit promotion program. They claim entitlement, upon repromotion, to GS-9, step 6, positions. Claim is denied since agency exercised its discretion and correctly applied highest previous rate rule in accord with its authorizing statute and regs. when claimants were voluntarily demoted.

Federal Personnel Manual Supplement 990-2, Book 531, Subch. S2-4b(3) (revised July 1969), and similar agency personnel manual provision do not constitute guarantees to employees that upon repromotion they would be entitled to rates of pay they would have attained had they remained in higher grade. Rather, these provisions are cautionary statement to agencies not to set employees' rates of pay upon voluntary demotion in manner which upon repromotion would cause employees to be entitled to rates of pay exceeding rates they would have attained had they remained in higher grade.

COMPENSATION--PERIODIC STEP-INCREASES--WAITING PERIOD
COMMENCEMENT--REPROMOTION

Claimants' repromotions after voluntary downgrading constitute "equivalent increases," and they were correctly required to begin new waiting period without counting service at grade and step before demotion as part of new waiting period. Federal Personnel Manual Supplement 990-2 Book 531, Subchapter S4-8c(1).

B-211696 Sept. 26, 1983

COMPENSATION--OVERTIME--FIREFIGHTING--FAIR LABOR STANDARDS
ACT--TRAINING

There is no basis for providing Federal firefighters who attend training with additional compensation where their entitlement to overtime compensation under Fair Labor Standards Act is reduced due to shorter tour of duty while attending training.

B-211910 Sept. 26, 1983

OFFICERS AND EMPLOYEES--TRANSFERS--GOVERNMENT *v.* EMPLOYEE
INTEREST--MERIT PROMOTION TRANSFERS--RELOCATION EXPENSE
REIMBURSEMENT--COMMUNICATION OF AGENCY POLICY

National Park Service has agency policy not to approve more than one transfer for Govt. employee at expense within year unless Director approves exception. Under Reconsideration of Platt, 61 Comp. Gen. 156 (1981), agency may issue regulation concerning relocation expenses and merit promotions which sets forth conditions under which relocation expenses will or will not be paid. Agency policy is valid and may be applied to merit promotion transfers, provided that conditions are clearly communicated in advance and in writing to all applicants.

OFFICERS AND EMPLOYEES--TRANSFERS--GOVERNMENT *v.* EMPLOYEE
INTEREST--MERIT PROMOTION TRANSFERS--RELOCATION EXPENSES--
ENTITLEMENT

Two National Park Service employees, who had recently transferred to new duty stations, applied and were accepted for merit promotion transfers despite agency policy not to approve more than one transfer for employee Govt. expense within 1 year. These employees are entitled to their relocation expenses since agency policy was not clearly communicated to applicants in advance. See Reconsideration of Platt, 61 Comp. Gen. 156 (1981). In addition, agency policy was directed to selecting officials. Once selections were made without clear advance notice, agency could not declare that transfers were not in interest of Govt.

B-197381 Sept. 27, 1983
ORDERS--AMENDMENT--RETROACTIVE--ADMINISTRATIVE ERROR,
OMMISSION, ETC. CORRECTION

Employee was authorized to travel to Washington, D.C., to participate in hearings before Federal Service Impasses Panel as union representative. Travel order provided departure date of July 25, 1981, for hearings to be conducted July 27 to Aug. 1, 1981, and employee was paid actual subsistence expenses for those days. However, employee departed on July 22, 1981, and took annual leave for July 22-24, 1981, in order to spend more time preparing for hearings. Employee seeks expenses for these 3 additional days based upon advice he received upon completion of his travel from agency employee in travel section. Additional reimbursement is denied since it was neither authorized in advance nor approved later by proper agency official.

B-210660 Sept. 27, 1983
MILEAGE--TRAVEL BY PRIVATELY OWNED AUTOMOBILE--BETWEEN
RESIDENCE AND TEMPORARY LODGINGS

Employee of Navy reported to duty at various worksites without reporting first to his nearby headquarters. He resided at temporary lodgings in that area and claims mileage to and from his permanent residence which during period of claim, he visited twice each week. Employee may not be paid mileage for travel between distant residence to which he does not commute on daily basis and alternate worksite in vicinity of his headquarters station. 57 Comp. Gen. 32, distinguished.

B-211244 Sept. 27, 1983
SUBSISTENCE--ACTUAL EXPENSES--HIGH RATE AREAS--ENTITLEMENT

Itinerant employee who did not regularly report to permanent duty station and who maintains his residence outside commuting distance from his duty station claims reimbursement for lunch and other meals on days that he commuted between his permanent residence and his temporary duty worksite in same city. Since this location is high-cost geographical area subsistence is paid on actual

expense basis. Agency disallowed claims under provision of local regs. which it interprets as limiting claimant to reimbursement of costs which would not be incurred by employee living and working at permanent duty station. Though employee points to provisions in agency reg. in support of his claim those provisions are not so clear as to require reversal of agency determination to disallow reimbursement.

B-211794 Sept. 27, 1983

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
FINANCE CHARGES--REIMBURSEMENT PROHIBITION--LAND CONTRACT
ESCROW FEE*

Employee received permanent change of station transfer and sold his home at old station under contract for deed. Under contract, purchaser agreed to make monthly mortgage payments owed by employee and employee, as seller, agreed to transfer title upon payment in full. Mortgage company approved arrangement, but on proviso that employee secure escrow agent to handle future payments for which employee remained liable. Employee may not be reimbursed for cost of escrow agents fee under para. 2-6.2c of FTR since agreement was solely for employee's convenience and was not directly related to sale itself.

B-212031 Sept. 27, 1983

*LEAVES OF ABSENCE--COURT--ENTITLEMENT--EMPLOYEE-PLAINTIFF--
ACTION TO PREVENT REMOVAL*

Employee brought action in U.S. District Court against Dept. of Labor (DOL) seeking to prevent her removal from her position by Sec. of Labor. She was charged 4 hours of annual leave for time spent observing oral argument in her case. District Court ruled she was improperly separated but U.S. Court of Appeals upheld her separation. We will not disturb DOL's exercise of discretion to charge her annual leave since there is no basis for unsuccessful plaintiff suing Federal Govt. to have such time considered official time. Furthermore, 5 U.S.C. 6322 granting court leave to jurors or witnesses does not apply here. 59 Comp. Gen. 290 distinguished.

B-212171 Sept. 27, 1983

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
TIME LIMITATION--EXTENSION*

FTR were amended in 1982 to allow agencies to extend 2-year period to complete residence transactions, provided transferred employee requests extension within 30 calendar days after expiration of 2-year period, unless 30-day period is specifically extended by agency. We conclude amendment authorizes agencies to extend 30-day period for requests on individual basis. Hence, Dept. of Health and Human Services may extend 30-day period for employee who was not informed of FTR amendment or of new time limit on requesting extension.

B-207672 Sept. 28, 1983

LEAVES OF ABSENCE--ADMINISTRATIVE LEAVE--AUTHORITY

Employee who sustained work-related injury was placed on administrative leave by agency for period of almost 4 months. Agency had no authority for granting employee administrative leave for such extended absence resulting from injury. Accordingly, agency should rescind administrative leave and charge sick and annual leave for period in question. Since employee's leave balances were sufficient to cover only portion of his 4-month absence from work, agency should retroactively place him on leave without pay for remainder of that period.

B-211227 Sept. 28, 1983

TRAVEL EXPENSES--TIPS

Official at Dept. of Energy, who headed U.S. delegation to international conference, may be reimbursed for tip to driver of car hired with driver by American Embassy in Vienna, Austria, for his use during conference. Dept. has determined that tip was appropriate and customary in these circumstances, and applicable regs. authorize reimbursement of local transportation expenses including tips for official business when employee is on temporary duty assignment.

B-210697 Sept. 29, 1983

*COMPENSATION--OVERTIME--FAIR LABOR STANDARDS ACT--
TRAVELTIME--COMMUTING TIME*

Employees of Social Security Admin. are not entitled to overtime compensation under Fair Labor Standards Act for time spent traveling in agency-hired buses from one district office to another during New York City transit strike of Apr. 1980 because such travel was home to work travel. Day's Work ended before buses were boarded and it is undisputed that no work and no preliminary or postliminary activities were performed while traveling or upon debarkation from busses.

*COMPENSATION--OVERTIME--TRAVELTIME--"OFFICIAL DUTY
STATION" CONCEPT*

Employees of Social Security Admin. are not entitled to overtime compensation under 5 U.S.C. 5542(b)(2), for time spent traveling in agency-hired buses from one district office to another during New York City transit strike of Apr. 1980 because all of offices involved were within employees' official duty station. Moreover, none of conditions specified in 5 U.S.C. 5542(b)(2)(B) were satisfied.

MILITARY PERSONNEL

B-210789 July 6, 1983

PAY--RETIRED--CHIEF MASTER SERGEANT OF AIR FORCE

Retired pay of member who was Chief Master Sergeant of A.F. prior to entering terminal leave status, at which time his status reverted to chief master sergeant, and who retired under 10 U.S.C. 8917 effective Nov. 1, 1981, may be computed based on special rate for Chief Master Sergeant of A.F. in effect prior to his commencing terminal leave or on basis of grade in which he was serving at time of his retirement as chief master sergeant.

B-209342 July 11, 1983

SUBSISTENCE--PER DIEM--MILITARY PERSONNEL-FIELD DUTY--MULTINATIONAL FORCE IN SINAI

Service members assigned to temporary duty with Multinational Force and Observers in Sinai are on field duty. While ordinarily members on field duty are prohibited by reg. from receiving per diem, JTRS were amended to provide \$3.50 per diem rate for these members. Since this amendment may be considered exception to general prohibition in regs., and since there is no specific statutory prohibition, paying per diem to such members is authorized.

B-210334 July 14, 1983

PAYMENTS--QUANTUM MERUIT/VALEBANT BASIS--ABSENCE, ETC. OF CONTRACT--GOVERNMENT ACCEPTANCE OF GOODS/SERVICES--RATIFICATION REQUIREMENT

Civilian Personnel Officer at U.S. Army Reserve Component Personnel and Administrative Center rather than Contracting Officer procured training by non-Government facility. Where Center accepted training services and received benefit therefrom, payment may be made on basis of quantum meruit provided that authorized contracting official recommends payment.

B-210526 July 14, 1983

*MILITARY PERSONNEL--RETIREMENT--TRAVEL AND TRANSPORTATION
ENTITLEMENT--TIME LIMITATIONS*

Where member retired in 1965, his claim for travel and transportation allowance to his home of selection accrued prior to our decision in 53 Comp. Gen. 963 (1974) which we held in 54 Comp. Gen. 1042 (1975) has only prospective effect. Therefore, rule existing prior to our decision in 53 Comp. Gen. 963, that member eligible for home of selection benefits upon retirement who does not actually perform travel to his home of selection within 1 year of retirement may not receive travel and transportation allowance to his home of selection or alternatively to his home of record or place of entry into active duty is applicable. Since record fails to show that member actually performed travel to his home of retirement within 1 year of his retirement, member is not entitled to travel and transportation allowance.

B-211693 July 15, 1983

*FAMILY ALLOWANCES--SEPARATION--TYPE I--SEPARATION FOR
PERSONAL REASONS*

Army sergeant serving unaccompanied tour of duty in Portugal was authorized family separation allowance, types 1 and 2 since his separation from his wife and children was due to military orders. While member was serving that tour of duty, Cal. ct., granted to him and his wife interlocutory decree of divorce that apparently incorporated separation agreement which gave each joint custody of children but gave physical custody of children to wife. Army then terminated member's family separation allowances. This action was correct since, although member's separation from his wife and children initially was due to military orders, interlocutory decree of divorce changed nature of separation to one for personal reasons which makes him ineligible for allowances.

B-210831 Aug. 2, 1983
WITNESSES--EXPERT--COURTS-MARTIAL PROCEEDING--PAYMENT

There is no authority to allow payment of claims for services as expert witnesses at Army court-martial proceeding where claimants' services were not authorized in advance by convening authority as required by para. 116 of Manual for Courts-Martial. Also, claims do not contain such elements of unusual legal liability or equity to warrant their submission to Congress under Meritorious Claims Act, 31 U.S.C. 3702(d).

B-212088 Aug. 2, 1983
TRANSPORTATION--VESSELS--FOREIGN--NECESSITY DETERMINATION

Upon his retirement in Frankfurt, Germany, Army physical decided that return travel to U.S. by air was medically contra-indicated for himself and his wife. Passenger service was not available on vessels of U.S. registry, so they returned by way of vessel of foreign registry. In absence of official authorization for surface travel, reimbursement for transoceanic travel of retired member and his dependent is limited to cost of Govt., if available, or Govt-procured air transportation, whichever is less.

B-210542 Aug. 23, 1983
PAY--RETIRED--ANNUITY ELECTIONS FOR DEPENDENTS--ANNULMENT OF WIDOW'S REMARRIAGE

Annuity payments to widow of deceased member under Retired Serviceman's Family Protection Plan which were terminated at time of widow's subsequent marriage in Nevada in Oct. 1963, may be paid for period retroactive to Sept. 1977 when payments to contingent beneficiaries were discontinued since Nevada court entered decree of annulment in Dec. 1963, as result of her allegations of fraud. Under Nevada law marriage became void ab initio when decree of annulment was entered.

B-210542 Aug. 23, 1983- Con.

*PAY--RETIRED--ANNUITY ELECTIONS FOR DEPENDENTS--ANNULMENT
OF WIDOW'S REMARRIAGE*

In determining effect of Dec. 27, 1983 annulment of marriage we will follow decision in Thurber v. U.S. (W.D. Wash., N.D. Oct. 28, 1963) which held that under Nevada law annulment of marriage by court of competent jurisdiction on grounds of fraud entitled plaintiff therein to reinstatement of annuity under Retired Serviceman's Family Protection Plan.

B-210205 Aug. 24, 1983

*TRANSPORTATION--DEPENDENTS--MILITARY PERSONNEL--TRANSFER
FROM RESTRICTED TO UNRESTRICTED ASSIGNMENT*

Marine was transferred from unrestricted duty station in N.C. to restricted duty station in Okinawa. He moved his dependents from N.C. to his home of record in Dallas, Texas. Subsequently, two of his dependents joined him at personal expense in Okinawa. Upon completion of Okinawa tour, he was assigned on permanent change of station to Hawaii. Instead of designating Dallas as his dependents' residence and requesting dependent travel at Govt. expense from N.C. to Dallas, at instruction of travel personnel in Okinawa he filed claim for and received dependent travel allowances from N.C. to Seattle, Washington, dependents' point of debarkation to Okinawa. He should have received dependent travel allowances only from his old duty station to home in Dallas and then directly from Dallas to his new duty station in Hawaii.

*TRAVEL EXPENSES--MILITARY PERSONNEL--TRANSFERS--
DISESTABLISHMENT OF RESIDENCE*

Marine is entitled to travel allowances for his travel from restricted overseas duty station to his family residence in Dallas, Texas, and then to his new duty station in Hawaii. Although two of his dependents did not remain in Dallas during his entire tour of duty in Okinawa but joined him there for part of that tour,

Marine was faced with necessity to return to Dallas to disestablish his family's residence there and prepare for his family's move to new duty station.

B-209076 Aug. 25, 1983

GRATUITIES--SIX MONTHS' DEATH--CONFLICTING CLAIMS--WIDOWS

Where several women, each purporting to be widow of deceased member of Armed Force, submit conflicting claims for entitlement to death gratuity due under 10 U.S.C. 1475-1480 (1976), and there is sufficient basis in record to support finding that only one claimant is surviving spouse, her claim will be allowed to preclusion of all others. Although Louisiana law permits good-faith putative spouse to take equal share in civil effects of putative marriage, she is not entitled under Fed. statute to portion of death gratuity as surviving spouse.

B-210528 Aug. 25, 1983

TRANSPORTATION--AUTOMOBILES--FOREIGN MAKE--PROHIBITION

Member stationed overseas who had purchased foreign-made vehicle overseas prior to entry on active duty may not be reimbursed expenses of shipping privately owned vehicle when he received permanent change-of-station orders to U.S. since 1 JTR, para. M11002-3, specifically prohibits shipment of foreign-made privately owned vehicles at Govt. expense.

B-212477 Sept. 19, 1983

*DEBT COLLECTIONS--WAIVER--MILITARY PERSONNEL--ALLOWANCES--
BASIC ALLOWANCE FOR QUARTERS(BAQ)*

Former member seeks waiver of debt which arose as result of "with-dependents" basic allowance for quarters which he received on account of his mother, who did not qualify as his dependent. Since he was timely informed of her ineligibility as his dependent for purpose of his entitlement to allowance, he was on notice of overpayment and therefore, is not without fault in matter. Waiver of his debt is denied.

B-5

B-211249 Sept. 20, 1983

*LEAVES OF ABSENCE--CIVILIANS ON MILITARY DUTY--CHARGING--
MILITARY LEAVE EXHAUSTED*

Federal agency should ordinarily charge employee performing active training duty as military or naval reservist with military leave until employee's military leave entitlements under 5 U.S.C. 6323(a) are exhausted, and agency may then charge employee with annual leave or leave without pay for any further absences from work taken for purpose of performing additional periods of active training duty. Employee who took leaves of absence from his civilian position to perform active duty as Navy reservist for periods exceeding his military leave entitlements should be so charged.

*LEAVES OF ABSENCE--CIVILIANS ON MILITARY DUTY--CHARGING--
NONWORK DAYS*

15 days of yearly military leave authorized for civilian employees by 5 U.S.C. 6323(a) are chargeable on calendar-day rather than workday basis, except for days at beginning or ending of military active duty period, so that civilian employee who was Navy Reserve member must be charged with 3 days of military leave for 3-day Labor Day weekend falling within 12-day period when he was on active Navy duty for annual Reserve training.
cited.

*LEAVES OF ABSENCE--CIVILIANS ON MILITARY DUTY--LEAVE, ETC.,
STATUS*

Civilian Govt. employee who was member of Navy Reserve could not properly be regarded as present for work in his civilian position while he was simultaneously on active duty as reservist, since civilian service is incompatible with military or naval active duty status.

Hence, even though employee continued to report for civilian work for several days after he was placed on active Navy duty under orders for annual Reserve training, his civilian leave accounts must be charged with day's leave of absence for each of those days. See Comp. Gen. decs. cited.

B-210827 Sept. 21, 1983

GRATUITIES--SELECTIVE REENLISTMENT BONUS--COMPUTATION--MULTIPLIER--USE OF UNEXPIRED TERM OF ENLISTMENT

In Matter of Timm, B-206550, Oct. 27, 1982, we held that notwithstanding agency regs., no recoupment action need be taken when service member who received regular reenlistment bonus was discharged early for purpose of immediate reenlistment for which selective reenlistment bonus was payable. We effectively held that recoupment regs. were inconsistent with governing bonus statute and were therefore void effective on date of enactment of statute in 1974. Therefore, Timm decision is to be applied retroactively, and service member who had an improper recoupment action taken against him prior to Timm decision may be refunded amounts recouped.

When Marine serving in enlistment period for which he received regular reenlistment bonus is discharged early for purpose of immediate reenlistment for which no reenlistment bonus is payable, no bonus recoupment action is to be taken so long as term of reenlistment following early discharge includes remaining period of service in prior enlistment. Any reg. to contrary is invalid.

B-211059 Sept. 26, 1983

TRANSPORTATION--DEPENDENTS--MILITARY PERSONNEL--ELIGIBILITY OF MEMBER--PAY GRADE AND LENGTH OF SERVICE

To be entitled to dependent transportation costs, uniformed service member must be in eligible pay grade when transportation is performed. Therefore, where member

received permanent change-of-station orders and his dependents traveled to new permanent station in anticipation of change, subsequent cancellation of those orders and reduction in his pay grade to one ineligible for dependent transportation costs precludes member's recovery of transportation costs for return of his dependents to his home of record incident to his discharge from service.

B-211220 Sept. 27, 1983

*FRAUD--~~FALSE CLAIMS~~--FOREITURE--RULE--APPLICABILITY--
MILITARY PERSONNEL*

As part of per diem claim, Navy member claimed lodging costs which Navy investigation determined not to be factual. Fraudulent claim for lodgings taints entire claim for per diem for days for which fraudulent information is submitted and per diem payments will not be made to individual for those days.

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