

Personnel Law: Civilian Personnel & Military Personnel

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UNITED STATES GENERAL ACCOUNTING OFFICE

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October through December 1983

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B-211954 Oct. 3, 1983

*GENERAL ACCOUNTING OFFICE--JURISDICTION--LABOR-MANAGEMENT
RELATIONS--CIVIL SERVICE REFORM ACT EFFECT--ARBITRATION
AWARDS--COMPTROLLER GENERAL DECISION REQUESTED*

AF civilian payroll office through administrative error failed to deduct union membership dues allotments from pay of certain employees and to remit dues to their union. Union filed grievance under its collective bargaining agreement with AF and received favorable arbitration award directing AF to pay overall unremitted dues. GAO has no authority to review or comment on merits of award, or to interpose any objection to its payment.

Certain civilian employees of AF received overpayments of salary or wages because union dues allotments were not withheld from their pay. GAO will not determine whether employees are eligible to keep overpayments, since in circumstances presented issue also involves questions concerning implementation of arbitration award which should be resolved under Federal labor-management relations procedures prescribed by ch. 71, title 5 of U.S.C.

11310 Oct. 4, 1983

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
LOAN ORIGINATION FEE*

An employee may be reimbursed loan origination fee she incurred incident to purchasing house on Dec. 23, 1982, at her new duty station since, effective October 1, 1982, the Federal Travel Regs. as amended, authorize reimbursement of such fees. Although previously the regulations did not authorize reimbursement of such fees, amended regulation is not inconsistent with authorizing statute, 5 U.S.C. 5724a and is now authority to reimburse employees for loan origination fees.

B-211310 Oct. 4, 1983 - Con.

**OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
LOAN ORIGINATION FEE**

Effective Oct. 1, 1982, the Federal Travel Regs. authorize reimbursement of loan origination fees for transferred employee purchasing house. Such fee, however, may be reimbursed only if bona fide and only to the extent fee does not exceed amounts customarily paid in locality of the residence. Furthermore, total reimbursable expense in connection with purchase of residence, including loan origination fee, is subject to overall limitation of 5 percent of purchase price or \$5,000, whichever is less.

B-212632 Oct. 4, 1983

**GENERAL ACCOUNTING OFFICE--JURISDICTION--LABOR--MANAGEMENT
RELATIONS--REQUESTS FOR DECISIONS--DECLINED**

Disbursing officer requests decision concerning propriety of payment of overtime and charging of leave incident to an arbitration award. Arbitrator found that agency violated agreement by changing employees' work schedules without the requisite 3 days' notice and for period less than 3-week minimum specified in agreement. In the absence of a request for an advisory opinion or a joint request from parties on a mutually agreed upon statement of the facts, this matter is more appropriately resolved under procedures authorized by 5 U.S.C. chapter 71. Thus, Comptroller General declines jurisdiction.

B-211775 Oct. 5, 1983

**TRAVEL EXPENSES--OVERSEAS EMPLOYEES--HOME LEAVE--
CIRCUITOUS ROUTES**

Two employees of General Accounting Office traveled from their overseas duty stations in Frankfurt, Germany, to their actual places of residence in the United States for purposes of taking home leave. Subsequently, both employees performed round-trip travel from their residences to Honolulu, Hawaii, before returning to their duty stations in Frankfurt. The employees' trips to Hawaii constituted side trips which may not be regarded as part of circuitous travel within the purview of para. 1-2.5b of the Federal Travel Regs. FPMR 101-7 Sept. 1981). Accordingly, expenses associated with employees' trips to Hawaii may not be paid by Govt.

B-211688 Oct. 13, 1983

*SUBSISTENCE--ACTUAL EXPENSES--MAXIMUM RATE--REDUCTION--
MEALS, ETC. COST LIMITATION*

Employee claims reimbursement for meal and miscellaneous expenses incurred while attending conference. Agency has reduced amount allowed for reimbursement on this item to percentage of statutory maximum actual subsistence allowance, as specified in agency guideline was justified in reducing employee's reimbursement for meal and miscellaneous expenses, and that formula used to reduce these expenses, being neither arbitrary nor capricious, was permissible.

TRAVEL EXPENSES--A^{TR} TRAVEL--MEALS--FURNISHING

Agency disallowed lunch costs for days on which employee was served in-flight lunch. We conclude that purchase of lunch following flight on which meal was served is personal choice, and not reimbursable business expense, even if employee feels that in-flight meal was too small.

*TRAVEL EXPENSES--FARES--TAXICABS--BETWEEN RESIDENCE AND
TERMINAL*

Employee requests reimbursement for costs claimed to have been incurred for taxicab service in traveling to and returning from airport. Employee contends that receipt is not necessary since taxicab fare, exclusive of tip, was less than \$15 for each trip. Employee also refuses to provide his residence address, contending that agency has no authority to request such information. FTR require that employee provide his residence address with his travel voucher. Since employee has refused to provide this information, we conclude that agency may properly deny reimbursement for item. Also, taxicab fares and tips should not be itemized separately and receipt should have been obtained by employee.

*TRAVEL EXPENSES--MISCELLANEOUS EXPENSES--TELEPHONES--LOCAL
CALLS--INTEREST OF GOVERNMENT REQUIREMENT*

Employee claims reimbursement for cost of local telephone calls charged to his hotel room. Agency has disallowed

reimbursement for local calls dated for day before and day after dates on which conference which he attended was in session, stating that there was no need for employee to conduct official business on these days. Employee bears burden of proving that costs incurred were essential to transacting of official business.

TRAVEL EXPENSES--TIPS--BAGGAGE HANDLING, ETC.--TRANSACTION OF OFFICIAL BUSINESS

Employee claims reimbursement for tips paid to airport porters for handling of box containing literature acquired at conference. Agency has reduced amount allowed for reimbursement, contending that amount claimed by employee was unreasonable. We will not disturb agency determination regarding reasonableness of expense, absent showing that determination was arbitrary, capricious or clearly erroneous. Moreover, since no separate charge was made for handling of box, amount allowed for reimbursement should be charged to employee's actual subsistence allowance rather than as necessary business expense.

VEHICLES--RENTAL--UNAUTHORIZED--CONSTRUCTIVE COST BASIS OF REIMBURSEMENT

Employee claims reimbursement for costs incurred incident to his use of rental car while attending conference. Agency, contending that use of rental car was not authorized as advantageous to Government, has determined that employee should have used alternative, less expensive mode of transportation. Accordingly, employee's reimbursement for this item has been reduced by agency, amount being calculated by comparison to expenses incurred by other agency travelers attending same conference. Although duly authorized official approved Mr. Trent's voucher, he did so without making determination of advantage to Government and given factors involved no such determination could have been made. Moreover, method used by agency to reduce claimed reimbursement for this item, being not arbitrary or capricious, was permissible. See FTR para. 1-2.2b; FTR para. 1-2.2c(1)(a).

B-210686 Oct. 19, 1983

*LEAVES OF ABSENCE--ANNUAL--CHARGING--TRAVEL DEVIATIONS--
ADMINISTRATIVE DISCRETION*

After completing temporary duty in Kuala Lumpur, Malaysia, on Friday afternoon claimant started his return trip to Wright-Patterson Air Force Base on Saturday. He arrived in Hong Kong at 1:35 p.m. on that day and remained there until 1 p.m. on Monday. He completed travel to Ohio on Tuesday and reported for duty on Wednesday. Agency's constructive scheduling of his return travel called for him to depart Hong Kong on Sunday, a nonworkday, and report for duty on Tuesday. Based on that schedule, agency charged employee 8 hours annual leave for Tuesday. Since agency may charge employee annual leave when he interrupts his travel for personal reasons, this charge to annual leave was not improper.

B-211932 Oct. 20, 1983

*DEBT COLLECTIONS--WAIVER--CIVILIAN EMPLOYEES--COMPENSATION
OVERPAYMENTS--FAILURE TO DEDUCT INSURANCE PREMIUMS--
OPTIONAL LIFE*

Employee elected optional life insurance coverage but, after making proper deductions for over 9 years, agency, through administrative error, began deducting less than was required. Employee was charged for the difference between what was collected and correct amount. He has requested waiver of erroneous overpayment of pay under 5 U.S.C. 5584. Waiver is denied since he continued to be covered by optional insurance throughout period and since he is not free from fault since he failed to examine Leave and Earnings Statements provided by agency which would have alerted him to error.

B-211956 Oct. 21, 1983

*TREASURY DEPARTMENT--BUREAU OF ENGRAVING AND PRINTING--
PREVAILING RATE EMPLOYEES--PAY INCREASE CEILING
APPLICABILITY*

Bureau of Engraving and Printing craft employees whose pay is set administratively under 5 U.S.C. 5349(a), "consistent with the public interest," were properly

limited to 4 percent wage increase for fiscal year 1983. Although pay increase limitation in 1983 Appropriation Act did not apply to these Bureau employees, agency officials properly exercised their discretion by limiting pay increases consistent with public interest in accordance with guidance issued by OPM.

B-212417 Oct. 21, 1983

COMPENSATION--DUTY PERFORMANCE--SALARY ONLY OF POSITION TO WHICH APPOINTED

Employee of Air Force claims backpay for difference in pay between WG-7 and WS-5 grade levels because his job description contained supervisory duties. Govt. employee is entitled only to salary of his appointed position regardless of duties he performs. Also, U.S. Supreme Court has held that neither Back Pay Act nor Classification Act creates right to backpay for past periods of alleged wrongful grade classification. Hence, employee's claim may not be allowed.

B-212486 Oct. 31, 1983

LEAVES OF ABSENCE--COMPENSATORY TIME--PROPRIETY OF SUBSTITUTING FOR OVERTIME

Joint submission from agency and union asks whether employees may receive compensatory time off for regularly scheduled overtime work. We hold that both law, 5 U.S.C. 5543, and regulations, 5 C.F.R. 550.114, preclude granting of compensatory time off for overtime other than that which is irregular or occasional.

B-212649 Oct. 31, 1983

OFFICERS AND EMPLOYEES--TRANSFERS--TEMPORARY QUARTERS--TIME LIMITATION

Reimbursement of temporary quarters subsistence expenses of transferred employee is statutorily limited to 30 days, except when employee moves to and from Hawaii, Alaska, or territories or possessions of U.S. 5 U.S.C. 5724a(a)(3). Transferred employee may not be paid allowance for 60 days on basis that she was given erroneous advice that longer period for temporary quarters subsistence expenses could be allowed in her case.

B-213012 Nov. 3, 1983

*COMPENSATION--OVERTIME--INSPECTIONAL SERVICE EMPLOYEES--
CUSTOMS INSPECTORS--8-1/2-HOUR SHIFTS*

Customs Inspectors in El Paso, Texas, who previously worked 8-hour shifts claim overtime for 26-month period they worked 8-1/2-hour shifts. Based on record before our Office, we conclude plaintiffs are entitled to overtime where agency has failed to establish that plaintiffs had duty-free lunch break which may be offset against their claims. Agency failed to meet its burden of proof that duty-free lunch period was established during 8-1/2-hour shift where none existed during 8-hour shift. It appears that lunch periods were scheduled and taken in same manner when 8-1/2-hour shift was in effect as when 8-hour shift was used.

B-208064 Nov. 15, 1983

*OFFICERS AND EMPLOYEES--TRAINING--SERVICE REQUIREMENT--
FAILURE TO COMPLETE OBLIGATED SERVICE*

Employee requests reconsideration of Lissa A. Martinez, B-208064, January 25, 1983, which held that agency may not refund amount previously collected from claimant upon reemployment since debt had been extinguished, Govt. made whole, and no right to recovery remained. Upon reconsideration, and based upon clarifying information furnished, the amount of \$1,698.21 received by agency from employee's retirement fund, subsequent to her reemployment and execution of "continuing 13-month service agreement," may be refunded to her. Agency is deemed to have waived its right of recovery of this amount since collection had not been effected at time of reemployment and execution of agreement. B-208064, Jan. 25, 1983, is modified accordingly.

Amount of \$725.56 owed on training indebtedness which was offset against salary and leave payments due employee at time of resignation, must be paid by agency into miscellaneous receipts account of U.S. Treasury unless

agency has statutory authority to retain funds. Since collection has been effected, transaction is closed and funds collected are not available for refund to employee. Lissa A. Martinez, B-208064, January 25, 1983, is modified accordingly.

B-212900 Nov. 15, 1983

TRANSPORTATION--DEPENDENTS--WIFE ETC. ACQUIRED AFTER AUTHORIZATION TO TRAVEL

Employee is not entitled to travel expenses for individual claimed to be her spouse by common-law marriage incident to her transfer from Oregon to Montana since no state in which they resided recognized such marriage. Even if common-law marriage arose in Montana at some point after she arrived, payment for travel of her claimed spouse would not be allowed, since when travel was performed no marriage existed. Further, under Montana law it is doubtful that such marriage could be shown for purpose of paying temporary lodging expenses.

B-205126 Nov. 29, 1983

COMPENSATION--OVERTIME--FAIR LABOR STANDARDS ACT--APPLICABILITY--PANAMA CANAL COMMISSION EMPLOYEES--FIREFIGHTERS

Panama Canal Commission requests a decision as to whether firefighters who were employed prior to October 1, 1979, as police officers are entitled to overtime pay under Fair Labor Standards Act (FLSA). These employees are now being paid at same basic pay rate they received as police officers, plus 25 percent premium pay for standby duty under Title 5. We hold that these employees may not be paid under FLSA. The "grandfather" clause of Panama Canal Treaty of 1977, and Panama Canal Act of 1979 does not cover these employees since their pay has not been reduced. Thus, their current terms and conditions of employment are no less favorable than they were prior to passage of Treaty and Act.

B-206558 Nov. 29, 1983

PROPERTY--PRIVATE--DAMAGES, LOSS, ETC.--HOUSEHOLD EFFECTS--
CARRIER LIABILITY

Common carrier is liable for full amount of damage in transit to household goods under Govt. bill of lading bearing both a released valuation notation of 60 cents per pound per article and a lump-sum valuation notation of \$20,000, since, under the Interstate Commerce Act, the carrier has obligation of issuing proper bill of lading or bear any resulting loss.

B-211701 Nov. 29, 1983

TRAVEL EXPENSES--LEAVES OF ABSENCE--TEMPORARY DUTY--
NOTICE OF DUTY PRIOR TO LEAVE

Employee, prior to leaving his permanent duty station (Fort Meade, Maryland), for South Thomaston, Maine, his leave point, was authorized travel from Boston to temporary duty stations (Los Angeles and Santa Barbara, California) and return to Boston. Since authorization for temporary duty occurred before departure from permanent duty station, he was properly reimbursed actual travel expenses not exceeding constructive cost of round-trip travel by direct usually traveled route between permanent and temporary duty stations.

B-212086 Nov. 29, 1983

CLASSIFICATION--BACKPAY--APPLICABILITY

Claimant is not entitled to backpay based upon unreasonable delay between upward reclassification of his position to grade GS-10 and his promotion to that grade. Classification action became effective only when properly delegated official certified reclassification on February 16, 1982, following a review of claimant's particular duties and responsibilities. An earlier memorandum addressing classification issue did not constitute reclassification action. The promotion 19 days after reclassification was effected within reasonable period of time (four pay periods) within the meaning of 5 C.F.R. 511.701(a).

B-212326 Nov. 29, 1983

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

Where employee purchased two dwellings on 50 acres of land, agency should have prorated real estate purchase expenses even though second dwelling was not habitable. Proration requirement of para. 1-6.1f of FTR applies even in the case of a single dwelling where employee purchases parcel of land in excess of that reasonably related to residence site.

OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
FINANCE CHARGES--REIMBURSEMENT PROHIBITION--LOAN CLOSING
FEES

Lump-sum loan fees, without listing of services covered and allocation of amount for each such item, are considered finance charges that are not reimbursable as real estate expenses for purchase of residence at employee's new duty station. Unless amounts are stated for particular items, it cannot be determined that charges are customary in local area.

B-200642 Dec. 5, 1983

FRAUD--FALSE CLAIMS--PER DIEM--"LODGINGS-PLUS" BASIS--
EVIDENCE ESTABLISHING FRAUD--SUFFICIENCY

This case which has now come before our Office for third time concerns disposition of suspected fraudulent per diem claim about which AF and claimant still have many legal and factual disputes. On basis of evidence in record, we believe that AF has sustained its burden of proving fraud for 30 of the days during first period of claim. Thus, no reimbursement of per diem expenses may be allowed for those days.

As to rest of first period and all of second period, we believe that claimant's expenditures, as substantiated by evidence developed during AF's investigation, do not appear to be tainted by fraud. Thus, per diem is allowed for those days as shown by our calculation. Excess amount of recoupment should be refunded to claimant.

B-212085 Dec. 6, 1983

*COMPENSATION--DOWNGRADING--GRADE RETENTION BENEFITS--
ENTITLEMENT*

Employee, whose temporary position expired, charges improper break in service caused her to lose benefit of highest previous rate rule when she was later reemployed at only step 1 of her prior grade. Our Office has no jurisdiction to consider her allegations that she was improperly denied appointment to another position or that her reemployment rights were violated. Such matters may be appealed to her employing agency or MSPB.

COMPENSATION--RATES--HIGHEST PREVIOUS RATE--APPLICABILITY

Employee, who was serving in temporary position following RIF, was released by agency when her temporary appointment expired. Employee was later reemployed by agency following service break, in grade previously held, but at step 1 of grade. Employee claims entitlement to retroactive step adjustment and backpay to step 9, highest step of grade previously held. Use of highest previous rate is discretionary on agency's part, there being no employee-vested interest in that higher step upon reemployment in absence of regulation so providing. In view of existing agency policy that highest previous rate would only apply to reappointments without service break, agency action was proper.

B-125137 Dec. 7, 1983

*COMPENSATION--REMOVALS, SUSPENSIONS, ETC.--DEDUCTIONS FROM
BACKPAY--UNEMPLOYMENT COMPENSATION*

When employee is given backpay award under 5 U.S.C. 5596 no deduction should be made for any unemployment compensation he received for period he received backpay. This is done since employee may have to repay state agency which paid him the benefits and such matter is for determination under state law.

B-211881 Dec. 9, 1983

LEAVES OF ABSENCE--ANNUAL--CHARGING--EXCESS--REPAYMENT

Employee who was credited excess annual leave because of administrative error must restore that leave to extent that repayment does not result in negative leave balance at end of any leave year. If employee used erroneously credited leave, repayment of resulting overpayment of pay may be waived if it appears he did not know, or have reason to know, of error. If records sufficient to es-

establish the employee's leave record are not available for any period of time it may not be assumed that he used excess leave for purposes of establishing debt and considering waiver.

B-212831 Dec. 13, 1983

DEBT COLLECTIONS--WAIVER--CIVILIAN EMPLOYEES--COMPENSATION OVERPAYMENTS--REDUCTION IN GRADE

Employee changed to lower wage grade due to RIF was entitled to retained pay for 2 years. Employee continued to receive pay of higher wage grade after expiration of 2 years and was charged difference between pay received and correct amount due. He has requested waiver of erroneous overpayment of pay under 5 U.S.C. 5584. Waiver is denied since he is partially at fault in failure to contact appropriate officials for explanation when his pay did not decrease after expiration of retained pay period.

B-212402 Dec. 14, 1983

DEBT COLLECTIONS--WAIVER--CIVILIAN EMPLOYEES--COMPENSATION INCREASE ADJUSTMENT, ETC.

Employee in grade GS-4, step 8, who received Upward Mobility appointment to position in grade GS-3, step 10, was afforded pay retention under 5 U.S.C. 5363 (1982). Agency erroneously computed employee's pay comparability adjustment in Oct. 1980, and, in Oct. 1981, increased employee's salary when it should have terminated his retained pay status. Errors were not discovered until Mar. 1982. Resulting overpayments for period Oct. 1980 to Oct. 1981 may be waived since employee questioned propriety of pay increase and was advised by agency officials that it was correct. However, a portion of overpayments made between Oct. 1981 and Mar. 1982 may not be waived since employee accepted those overpayments knowing that error had been made.

B-210522 Dec. 15, 1983

OFFICERS AND EMPLOYEES--TRAINING--EXPENSES--REIMBURSEMENT

Employee contends that he should be reimbursed for expenses incurred incident to attendance at Nevada Academy of Family Physician's meeting because it provided him with 20 hours of continuing medical education he needs to retain his medical license and board certification, which he in turn needs to retain his EPA position. Claim

is denied since expenses are personal in nature, and within purview of those cases where we have held that it is duty of employee to qualify himself for performance of his official duties.

TRAVEL EXPENSES--OFFICIAL BUSINESS--REQUIREMENT

Claim by medical doctor employed by EPA for reimbursement of registration fee and per diem expenses incurred incident to his attendance at Nevada Academy of Family Physician's meeting is governed by prohibition of 5 U.S.C. 5946 against such payment and may not be allowed absent evidence that his attendance was part of authorized training program under 5 U.S.C. 4109, or that it was related to agency functions or management under 5 U.S.C. 4110. In absence of such evidence annual leave should be charged since employee's travel cannot be considered official travel.

B-212244 Dec. 16, 1983

OFFICERS AND EMPLOYEES--TRANSFERS--TRANSPORTATION FOR HOUSE HUNTING--DISALLOWANCE

Employee may not be reimbursed for a house-hunting trip which was not authorized in advance, and the employee's mileage allowance may not be increased to include the travel of family members who did not move to the new duty station within 2 years of the effective date of the employee's transfer.

TRANSPORTATION--HOUSEHOLD EFFECTS--COMMUTATION--PRIVATELY OWNED VEHICLE USE--WEIGHT EVIDENCE

Under applicable regulations constructive weight of goods under commuted rate system may be computed only on basis of properly loaded van space.

TRANSPORTATION--HOUSEHOLD EFFECTS--PRIVATELY OWNED VEHICLE, ETC.--EVIDENCE

Employee, who transported his household goods in private automobile during permanent change-of-station move, may not be reimbursed under commuted rate system. Under applicable regulations constructive weight of goods under

commuted rate system may be computed only on basis of properly loaded van space. Employee may not be reimbursed for a house-hunting trip which was not authorized in advance, and the employee's mileage allowance may not be increased to include the travel of family members who did not move to the new duty station within 2 years of the effective date of the employee's transfer.

B-212688 Dec. 16, 1983

LEAVES OF ABSENCE--ADMINISTRATIVE LEAVE--AUTHORITY

Employee on permanent change of station transfer from Texas to Puerto Rico incident to RIF action, began travel less than 30 days after travel orders were issued. Because he owned horse and equipment, which due to short time involved had to be sold with professional help at distant location, he was granted administrative leave for that purpose. On question or propriety of that action, granting of leave without charge to annual leave is matter of agency discretion under guidance of our decisions. In circumstances presented we interpose no objection to its being granted here. See cases cited.

OFFICERS AND EMPLOYEES--TRANSFERS--NONREIMBURSABLE EXPENSES--MISCELLANEOUS ITEMS

Employee on permanent change of station transfer, sold his personally owned horse and equipment, which was used in official Govt. business, and claims reimbursement for cost of selling it as necessary incident of his transfer. Claim for reimbursement is denied since paragraphs 2-3.1(c)(1) and (9) of FTR specifically excludes from that coverage losses and costs incurred in selling personal property, and a horse has been deemed to be personal property.

B-213231 Dec. 16, 1983

COMPENSATION--DOUBLE--CONCURRENT MILITARY RETIRED AND CIVILIAN SERVICE PAY--RETIRED PAY COST-OF-LIVING INCREASES--EFFECT ON CIVILIAN COMPENSATION

Deduction from civilian pay in amount of increases in

retired pay of "member or former member of uniformed service" as required by subsection 301(d) of Omnibus Budget Reconciliation Act of 1982 is applicable to individual who is retired officer of Army Reserve component.

B-212154 Dec. 23, 1983

DEBT COLLECTIONS--WAIVER--CIVILIAN EMPLOYEES--COMPENSATION OVERPAYMENTS--COLLECTION AGAINST EQUITY AND GOOD CONSCIENCE

Blue collar Navy employee, who suffered two work-related injuries, was twice transferred between Navy and Labor payrolls. Through administrative error, Navy failed to withhold deductions for health benefits for over 6 years. Although employee received leave and earnings statements, he had limited ability to understand those statements due to his limited command of English. In addition, he did not receive documents relating to his transfers between payrolls. Under circumstances we grant waiver of employee's indebtedness under 5 U.S.C. 5584 (1982).

B-212352 Dec. 23, 1983

COMPENSATION--PANAMA CANAL EMPLOYEES--TROPICAL DIFFERENTIAL--REGULATIONS

Certain employees in Panama are entitled to tropical differential pay if they continuously occupy position in Panama after discharge from military service. Under agency practice and interpretation of its regulations this requirement was satisfied despite few days delay after military discharge before civilian employment. Evidently such delay was sometimes administratively unavoidable. However, tropical differential is denied claimant who delayed his civilian appointment for 22 days to return to U.S. for discharge and to transact personal business after military discharge.

B-212697 Dec. 23, 1983

OFFICERS AND EMPLOYEES--OVERSEAS--HOME LEAVE--ENTITLEMENT

Forest Service determined that employee's actual place of residence at time of his appointment to Federal Service was Puerto Rico because that had been his prin-

cipal place of abode and employment during previous 2 years. Agency's determination is not clearly erroneous in fact or contrary to law, so that no basis exists for changing it. Although employee asserts that he was legal domiciliary of Wisconsin, that has no bearing on issue because a person's "domicile" and "residence" are not necessarily same, and he had actually been residing in Puerto Rico long before he obtained Govt. employment there. Accordingly, employee is not entitled to periodic home leave or round-trip travel expenses for trips to Wisconsin.

B-210722 Dec. 27, 1983

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

Three employees of Naval Ship Repair Facility, Guam, were assigned to temporary duty at Bremerton, Washington. During their journeys to and from temporary duty site, they spent approximately 50 hours traveling, but were paid for only 8 hours of that time. If these employees are non-exempt under Fair Labor Standards Act (FLSA), and they worked 33 hours or more during their first week at Bremerton, they may be entitled to overtime pay for portion of their trip to Bremerton because it corresponded to their normal tour of duty. There is no additional entitlement for return trip, since they were already given credit for 8 hours of work during that journey.

*COMPENSATION--OVERTIME--TRAVELTIME--CRITERIA FOR
ENTITLEMENT--NON-COMPLIANCE*

Three employees of Naval Ship Repair Facility, Guam, were assigned to temporary duty at Bremerton, Washington. During their journeys to and from temporary duty site, they spent approximately 50 hours traveling, but were paid for only 8 hours of that time. Employees are not entitled to overtime for such travel under 5 U.S.C. 5542(b)(2)(B), since they did not meet any of requirements of that statute. However, official who approved travel during nonduty hours should state his reasons in writing and, upon request, furnish a copy of his reasons in accordance with 5 C.F.R. 610.123.

B-212359 Dec. 27, 1983

*TRANSPORTATION--VESSELS--FOREIGN--AMERICAN VESSEL
AVAILABILITY--AUTOMOBILES, HOUSEHOLD EFFECTS, ETC.--
JUSTIFICATION*

Although shipment of Dept. of Defense employee's privately-owned automobile was authorized on foreign-flag vessel on employee's travel orders incident to transfer, reimbursement of shipping expenses on foreign-flag vessel is precluded under section 901 of Merchant Marine Act of 1936, 46 U.S.C. 1241(a) (1976), which requires justification for use of foreign-flag vessel where American-flag vessels are available. Lower cost and capability of transporting passengers and automobiles on same vessel are not adequate reasons for use of foreign-flag vessels and as result employee is responsible for expenses involved even though Govt.'s representative erroneously authorized shipment.

B-213341 Dec. 27, 1983

*SUBSISTENCE--PER DIEM--REDUCTION--QUARTERS FURNISHED--
PROPRIETY OF REDUCTION*

Where Dept. of Defense employee lodged without charge in Govt. quarters at remote duty site in Alaska, because other lodgings were unavailable, his per diem was properly reduced under regulation requiring 50 percent reduction in locality per diem rate where employee lodges free of charge in Govt. quarters. Fact that accommodations may not have met Dept.'s own standards of adequacy does not change their character as Govt. quarters or warrant payment at unreduced rate of per diem to compensate for hardship that may have been occasioned by his occupancy of particular quarters.

B-210479 Dec. 30, 1983

FEES--REGISTRATION--WHAT CONSTITUTES

Three employees of Forest Service seek reimbursement for registration fees which represented cost of meals at luncheon meetings attended by them as Combined Federal Campaign workers and Loaned Executives authorized by 5 C.F.R. 950.509(k). Reimbursement may not be allowed. Under provisions of 5 U.S.C. 4110, to extent that such expenses

may be reimbursed from appropriated funds, such reimbursement is limited to situations involving functions and activities of agency. The meetings here involved do not concern function or activity of the Forest Service for which claimants were employed or for which agency appropriations were made.

MILITARY PERSONNEL

B-212724 Oct. 17, 1983

PAY -RETIRED--FOREIGN EMPLOYMENT--CONGRESSIONAL CONSENT--
PUB. L. 95-105--APPLICABILITY

Saudi Arabian Airlines appears to be controlled by govt. of Saudi Arabia since its Board of Directors consists mainly of govt. officials or appointees of govt. officials. Therefore, it appears that Airlines is an instrumentality of the Saudi Arabian government. Any retired military members employed by airline must receive permission from the Secy. of State and Secy. of the Service concerned pursuant to law to accept such employment or be in violation of Art. I, sec. 9, cl. 8 of the Constitution of the U.S., which prohibits such employment without consent of Congress. And in absence of such approval, retired member's retired pay must be withheld in an amount equal to his salary from Airlines.

B-211424 Oct. 31, 1983

SUBSISTENCE--PER DIEM--MILITARY PERSONNEL--FRACTIONAL DAYS--
-LESS THAN 10 HOURS

Member of Army whose regular duties involve performing flights as aircrew member which are more than 6 but less than 10 hours is not entitled to partial per diem allowance for meals which he cannot take at his permanent station, since he is not incurring any additional expense for meals taken away from his station.

B-211545 Nov. 1, 1983

SUBSISTENCE--PER DIEM--MILITARY PERSONNEL--TEMPORARY DUTY--
TRAINING OR SCHOOL ASSIGNMENT--CALIFANO CASE

Travel per diem authorized for service members under 37 U.S.C. 404 is payable to member only "when away from his designated post of duty," so that per diem is not payable to newly enlisted airman undergoing preliminary training under

orders that do not designate first permanent duty station to which he is to proceed upon completion of his training assignment, since training station where he is then located is only "designated post" that he has.

SUBSISTENCE--PER DIEM--MILITARY PERSONNEL--TRAINING OR SCHOOL ASSIGNMENT--QUARTERS AND MESS AVAILABLE

When orders are issued designating first permanent duty station of newly enlisted airman who is at training station taking preliminary course of instruction, airman may then be regarded as being "away from his designated post of duty" and in travel status. However, if Govt. quarters and dining halls are available to him at training station, so that he has no actual need to incur additional living expenses while in that travel status, he remains ineligible for per diem under JTR. This is consistent with underlying statutory purpose of per diem, which is solely "to meet actual and necessary" additional expenses of living during periods of travel.

SUBSISTENCE ALLOWANCE--AUTHORITY TO MESS SEPARATELY

Under 37 U.S.C. 402(b) enlisted service members are authorized basic allowance for subsistence even though Govt. dining facilities are available to them, "when permission to mess separately is granted." Implementing regulations of the Dept. of Defense provide that the service Secys. may grant that permission to any enlisted members "except basic trainers" who are residing with their dependents. Secy. of AF therefore has discretionary authority to grant airmen undergoing advanced courses of instruction following basic training permission to reside with their dependents and to take their meals outside of available Govt. dining halls, and those airmen would be entitled to a subsistence allowance.

B-211545 Nov. 1, 1983 - Con.

SUBSISTENCE ALLOWANCE--PURPOSE

Fundamental purpose of basic allowance for subsistence authorized by 37 U.S.C. 402 is to defray costs incurred by service members in purchasing food during periods when they are not receiving cost-free meals from the Govt. Although 37 U.S.C. 402(b) was amended in 1981 to provide allowance for enlisted member whenever he is "performing travel under orders away from his designated post of duty," the allowance is not payable to newly enlisted airmen while they are in travel status undergoing preliminary training and are simultaneously receiving meals without charge at available Govt. dining halls, since in those circumstances payment of the allowance would improperly defeat purpose of statute.

B-212034 Nov. 17, 1983

PAY--RETIRED--COMPUTATION--CREDITABILITY OF PARTIAL YEAR SERVICE

Sec. 772 of 1982 Dept. of Defense Appropriations Act restricted funds appropriated by that Act so that 6 months or more of service would no longer be "rounded up" to full year in computing retire pay. An exception was provided for those "applying for retirement" prior to Jan. 1, 1982. AF officer did not have enough officer service to retire as officer. However, he had previous enlisted service and, under a procedure prescribed by AF regulations, he applied for separation as officer, reenlistment, and then retirement as enlisted member in April 1982. His filing of forms under that procedure on September 15, 1981, constituted application for retirement within meaning of exception in sec. 772 of 1982 act.

B-213293 Dec. 7, 1983

MILITARY PERSONNEL--EVACUATION , ETC.--COST OF LODGINGS

Because of imminent danger of natural gas explosion, military installation commander re-

sponsible for protection of personnel and facilities ordered two Army officers and their families to vacate Govt. family housing. Claims for reimbursement of reasonable costs of motel lodgings necessarily incurred as result of that order may be paid from installation's operation and maintenance funds, since those costs were directly related to commander's orders and proper administration of the installation.

B-213543 Dec. 7, 1983

*TRANSPORTATION--HOUSEHOLD EFFECTS--WEIGHT LIMITATION--
ADMINISTRATIVE DETERMINATION*

GAO will not disturb agency's determination of net weight of service member's household goods shipment in absence of clear error or fraud. Where cumulative effect of circumstantial evidence is insufficient to establish clear error or fraud, claimant has not met his burden of proof so as to have his claim for excess weight charges collected from him allowed.

*TRANSPORTATION--HOUSEHOLD EFFECTS--WEIGHT LIMITATION--
EVIDENCE--SUFFICIENCY*

Navy's assessment of excess weight charges based on weight tickets issued by certified weighmaster is valid basis for computing net weight of member's household goods. That assessment cannot be changed based on member's allegations that scales were operated by carrier's parent company; driver refused to reweigh tare weight on independent scales; carrier, subsequent to move, was suspended from military traffic; and illegally increasing weight has been practiced by some in the moving industry.

B-212149 Dec. 16, 1983

*TRANSPORTATION--DEPENDENTS--MILITARY PERSONNEL--CHILDREN--
ATTENDING SCHOOL*

Dependent of service member stationed overseas may be authorized early return to U.S. at Govt. expense to attend college only if conditions in JTR are met and if travel is authorized in advance. If not dependent may travel on space-available transportation under Dept. of Defense regulations. If service member does not seek authority for early return and is not able to take advantage of space-available travel, no payment for returning dependent to college is authorized.

*TRANSPORTATION--DEPENDENTS--MILITARY PERSONNEL--CHILDREN--
21 YEARS OF AGE*

Dependent of service member was authorized to travel from Tacoma, Washington, to Maxwell Air Force Base, Alabama, in connection with member's permanent change of station from West Germany to Maxwell. Since dependent was already in U.S., and had attained age of 21 while in U.S., orders may not be considered as authorizing travel as dependent at Govt. expense.

B-199233 Dec. 27, 1983

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

Where spouses with dependent child are both members of uniformed services, and one member is given permanent change of station with dependent travel authorized, Military Pay and Allowances Entitlements Manual may not be interpreted or amended to authorize payment of Family Separation Allowance payment to either member. Whether child travels to reassigned member's new station or remains at old station is matter of personal choice and not forced separation as when member is assigned to re-

stricted station.

B-212338 Dec. 27, 1983

TRANSPORTATION--AUTOMOBILES--MILITARY PERSONNEL--REPLACEMENT
VEHICLE

Vol. 1 of JTR may be amended to authorize shipment of replacement vehicle for member of uniformed service stationed overseas for protracted period when his vehicle becomes impractical to repair because of normal deterioration and wear. Law requires only that replacement became necessary for reason beyond control of member and that replacement is in interest of U.S.

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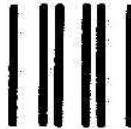
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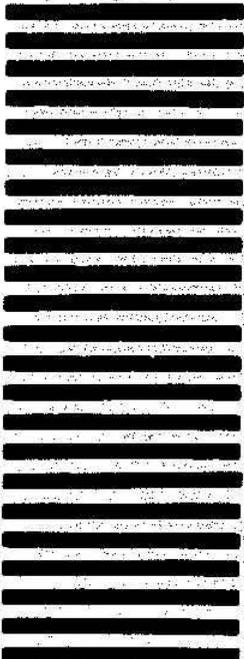


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