

# Personnel Law: Civilian Personnel & Military Personnel

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**UNITED STATES GENERAL ACCOUNTING OFFICE**

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VOLUME XXVII

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B-212851 Jan. 4, 1984

LEAVES OF ABSENCE--CIVILIANS ON MILITARY DUTY--CHARGING--  
WORK DAYS

Civilian employee, who is member of Army Reserve, may not use annual leave and military leave interchangeably for workdays missed because of performing active duty as member of Reserve in order to avoid charge of military leave for nonworkdays. Military leave ordinarily will be used until it is expended then annual leave will be charged. But regardless of how leave is charged employee cannot avoid charge of military leave for nonworkdays otherwise falling within period of military leave by having annual leave charged on certain days.

B-213085 Jan. 16, 1984

OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--  
PRIOR TO OFFICIAL NOTICE OF TRANSFER

Employee was selected for position away from his duty station. In anticipation of transfer, he put his residence up for sale. Shortly thereafter, he was selected for same position at his duty station. Employee seeks reimbursement for cost of selling old and purchase of new residence, claiming he was committed to sale before acceptance of position at his old station. Employee's claim for reimbursement is denied since anticipatory expenses may not be paid unless transfer is authorized, or actually approved and effected. No such authorization was ever issued, and employee chose to remain at old duty station for personal reasons.

B-212670 Jan. 17, 1984

LEAVES OF ABSENCE--ANNUAL--RE-CREDIT OF PRIOR LEAVE--  
RECONSTRUCTION BASIS

Where employee requests that his annual and sick leave accounts be adjusted to correct alleged errors made in

certifying his leave balances at time of his transfer from Okinawa to Korea in 1975, determination to adjust his leave accounts and determination of amount of leave to be credited are matters primarily for employing agency. Where official leave records are not available, agency may consider appropriate secondary records such as Time and Attendance Reports, Leave and Earnings Statements, personal leave records, or statements of supervisors or timekeepers.

B-212046 Jan. 23, 1984

*COMPENSATION--DOUBLE--CONCURRENT MILITARY RETIRED AND CIVILIAN SERVICE PAY--CIVILIAN POSITION*

With certain exceptions, Federal law, now codified as 5 U.S.C. 5532 note (1982), requires that if members or former members of uniformed service during any period in fiscal year 1983, 1984, or 1985 receive retired retainer pay, and hold "civilian position" as defined therein, then deductions equal to amount of any increases in retired or retainer pay, be made from pay for their Federal civilian positions. State Agricultural Extension Service employees involved are within definition of "civilian position" since they hold joint Federal-State appointment by authority of Smith-Lever Act and OPM regs.

*COMPENSATION--DOUBLE--CONCURRENT MILITARY RETIRED AND CIVILIAN SERVICE PAY--CIVILIAN POSITION--WITHOUT COMPENSATION*

No salary deductions can properly be made even though employees involved here hold "civilian position," since they serve as agents without compensation, do not receive any pay from Federal funds for their civilian positions, and funds under Smith-Lever Act from which they are paid are considered funds of grantee involved.

B-212548 Jan. 24, 1984

*LEAVES OF ABSENCE--FORFEITURE--RESTORATION--ADMINISTRATIVE ERROR*

Employee of MSPB submitted a written and timely request for use of 204 hours of annual leave subject to forfeiture at end of leave year. Board denied use of leave due to

workload without scheduling it. Board's failure to schedule annual leave or request exigency determination by designated official constituted administrative error under 5 U.S.C. 6304(d)(1)(A), and leave may be restored.

*B-212698 Jan. 24, 1984*

*MILEAGE--TRAVEL BY PRIVATELY OWNED AUTOMOBILE--BETWEEN RESIDENCE AND HEADQUARTERS*

Army employee may not be paid for cost of travel between his residence and his regular place of work at his official duty station absent statutory of regulatory authority.

*B-212316 Jan. 25, 1984*

*TRAVEL EXPENSES--FIRST DUTY STATION--MANPOWER SHORTAGE--RELOCATION EXPENSES*

Employee of U.S. Information Agency who traveled from Tehran, Iran, to Washington, D.C., in Feb. 1980 and who was first employed by Agency in Sept. 1980 in manpower shortage position is not entitled to reimbursement of his travel expenses from Iran since his travel was not related to his selection for employment some 6 months later.

*VOUCHERS AND INVOICES--TRAVEL--RECEIPTS, ETC. TO SUPPORT EXPENSES--INCONSISTENCIES*

Employee may not be allowed payment of transportation expenses and per diem for his family members for travel from Tehran, Iran, to Washington, D.C. area where there is unexplained discrepancy between period of travel shown on voucher and tickets submitted by employee in support of that voucher. Furthermore, record does not establish that appropriate agency officials properly determined that Iran was employee's place of residence at time of his selection for employment.

*B-213339 Jan. 25, 1984*

*SUBSISTENCE--ACTUAL EXPENSES--LAUNDRY COSTS--REASONABLENESS--AGENCY'S INITIAL DETERMINATION--ACCEPTANCE BY GAO*

Employee on temporary duty assignment to Washington, D.C.,

high-cost geographical area where actual subsistence reimbursement rather than travel per diem is paid, claimed laundry and dry cleaning expenses of \$28. His agency allowed reimbursement of \$11 on basis that employee is not entitled to cleaning expenses incurred near conclusion of assignment so as to return home with clean clothes. Comptroller General will not disturb agency's determination since in this case it is not clearly erroneous, arbitrary, or capricious.

*B-212261 Feb. 6, 1984*

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

An Internal Revenue Service employee was authorized a house-hunting trip to Sheridan, Wyoming, to facilitate a permanent change of station. Federal Travel Regulations paragraph 2-4.1a provides that an employee's round trip for house-hunting, "must be accomplished prior to his/her reporting to the new official station." Since the employee reported for duty in Sheridan before completing the house-hunting trip, she must repay certain monies advanced to her for the trip. That she reported for duty only because she stayed in Sheridan to wait for her relocation check to arrive does not affect the application of the regulation.

*B-202643 Feb. 7, 1984*

*COMPENSATION--DOWNGRADING--SAVED COMPENSATION--ENTITLEMENT*

An employee who exercised his reemployment rights and accepted a lower grade, was entitled to saved pay under 5 U.S.C. 5337. During saved pay period, he was promoted and received a permanent change-of-station transfer to higher cost area of the country. Employee claims saved pay should have been used for purpose of the two step-increase rule on promotion to help offset increased cost of living in higher cost area. Employee is not so entitled as there is no statutory or regulatory basis for such pay setting formula. Betty J. Beasley, et al., B-197025, August 3, 1981. The provision of 5 U.S.C. 5334(b) which authorizes the two step-increase

rule on promotion, specifically limits its use for pay setting purposes to the rate of pay of an employee's grade and step as though not entitled to saved pay, regardless of circumstances.

*B-212087 Feb. 7, 1984*

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

An employee stationed in California appeals the settlement which denied certain per diem and transportation expenses incident to his temporary duty travel to Florida, where travel was by an indirect route and reimbursement was based on constructive travel by a direct route. Denial of the employee's claim for additional meal and lodging expenses is sustained, since there is no authority to pay subsistence expenses where travel by an indirect route increases traveltime or where the employee is in an annual leave status when the expenses are incurred. Although the employee may not be reimbursed for a rental car on days when no official business is performed, he may be reimbursed for allowable transportation not to exceed the cost of the rental car.

*B-202863 Feb. 8, 1984*

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

Upon reconsideration requested by Internal Revenue Service (IRS), previous decision allowing the claim of an IRS employee for retroactive adjustment of pay is upheld. The employee was appointed by IRS to a position at GS-3, step 1, although IRS stated his education and prior service at the Postal Service qualified him for the GS-4 level in his new position. We held that since IRS regulations direct the appointing officer to set the employee's rate of pay based on his previous service and employment qualifications, the same factors used in the determination of his qualification for the GS-4 level, the employee is entitled to a retroactive adjustment to the rate of pay within the GS-3 grade equal to the GS-4, step 1, rate. By so holding we have not substituted our judgment for that of the appointing officer, as IRS contends.

B-212361 Feb. 15, 1984

*DEBT COLLECTIONS--WAIVER--CIVILIAN EMPLOYEES--COMPENSATION  
OVERPAYMENTS--PERIODIC STEP-INCREASES*

Employee was twice reduced in grade, due to several reductions in force, from a GS-13, step 8, to a GS-11, step 10. He was granted a retained salary rate at GS-13, step 8, for 2 years with a further extension due to a subsequent downgrade. Agency erroneously granted employee a within-grade increase at the end of the 3-year waiting period between GS-13, steps 8 and 9, although 5 C.F.R. 531.515 (1976), provides that an employee with a retained rate is eligible for a within-grade increase only in the grade in which he is serving and only on the rate selected at the time of demotion. Employee was not at fault in accepting and retaining the overpayment of pay and collection is waived under the provisions of 5 U.S.C. 5584 (1976), since employee may not reasonably be expected to have been aware of the regulation and effect of a reduction in force on the waiting period between step increases.

B-211818 Feb. 14, 1984

*SUBSISTENCE--PER DIEM--TEMPORARY DUTY--AT PLACE OF FAMILY  
RESIDENCE*

Employee claims reimbursement for reduced per diem rate (no lodging cost) while staying at his residence which is near his temporary duty site. When working at official duty station 65 miles from his residence, employee does not commute from his residence but stays at his in-laws' house. His travel orders authorized payment of per diem in accordance with Joint Travel Regulations (JTR). Both JTR and agency's own regulations provide for payment of reduced per diem (no lodging cost) in this situation. We hold that these regulations require payment of a reduced per diem rate under these circumstances.

B-212445 Feb. 14, 1984

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

United States Information Agency employee and family performed official transfer travel from Montevideo,

Uruguay, to Washington, D.C., with home leave en route at Burlington, Iowa. Foreign Service Travel Regulations require all official travel be performed directly by "usually traveled route" which is one or more routes essentially the same in cost and travel-time. We find that segment of employee's travel performed over 16 days on a Mississippi riverboat between New Orleans and Burlington was a deviation from the usually traveled route for the employee's personal convenience and for which he must bear the extra expense.

*B-213101 Feb. 14, 1984*

*PAY--RETIRED--SURVIVOR BENEFIT PLAN--SPOUSE--ELIGIBLE BENEFICIARY*

A retired naval officer seeks to have the deductions from his retired pay for the cost of spouse coverage under the Survivor Benefit Plan terminated. The basis of his request is that he has no eligible spouse beneficiary because his wife is entitled to a Survivor Benefit Plan annuity as a result of the military service of her previous husband who died while serving on active duty. The deductions from the officer's retired pay must continue because his wife is legally a potential beneficiary of an annuity provided by him and is, therefore, his eligible spouse beneficiary. 56 Comp. Gen. 1022, distinguished.

*B-212480 Feb. 15, 1984*

*TRANSPORTATION--DEPENDENTS--OVERSEAS EMPLOYEES--CHILDREN--ATTEND COLLEGES, SCHOOLS, ETC.*

The children of an employee of the Panama Canal Commission who live in San Francisco with the employee's wife are not eligible for tour renewal travel to Panama to visit the employee during summer vacation. Unless the children return to Panama to live they cannot be considered members of the employee's household within the meaning of the Federal Travel Regulations.

*B-213740 Feb. 15, 1984*

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

Transferred employee claimed 2.5 percent loan origination

fee but agency limited reimbursement to 2 percent where HUD advised agency that 2 percent was the usual and customary rate for loan origination fees in the area of employee's new official duty station. The information provided by HUD creates a rebuttable presumption as to the prevailing rate, and the employee has not provided information sufficient to rebut this presumption.

B-212687 Feb. 22, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--GOVERNMENT V. EMPLOYEE INTEREST--RELOCATION EXPENSE REIMBURSEMENT--ADMINISTRATIVE DETERMINATION--PROPRIETY*

A transferred employee's entitlement to relocation expenses depends upon a determination that the transfer is not primarily for the convenience or benefit of the employee. Our Office will not disturb an agency determination unless it is clearly erroneous, arbitrary, or capricious. Thus, we sustain an agency determination to deny relocation expenses to an employee who transferred from Washington, D.C., to Coeburn, Virginia, where the agency determined that the transfer was for the employee's own convenience since she voluntarily transferred to a lower graded position which was not subject to the agency's merit promotion plan. The fact that she was competitively selected for the position does not overturn the agency determination.

B-213164 Feb. 22, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--AGENCY LIABILITY FOR EXPENSES OF TRANSFER*

Employee, who was transferred for training purposes and reimbursed for relocation expenses, subsequently claimed expenses associated with a change of residence at his permanent duty station. The claim may not be allowed since the employee's eligibility for the relocation expenses authorized by 5 U.S.C. 5724 and 5724a (1982) is conditioned on such expenses being incurred pursuant to a permanent change of station. The employee was reassigned to another position at the same duty station and, therefore, did not undergo a change of duty station. Although agency officials advised the employee that he could be reimbursed for expenses incurred in a local move, the Government may not be bound by the erroneous acts or advice of its employees.

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

Employee, who was transferred in August 1981, was reimbursed for an \$850 loan origination fee he incurred in November 1982, when purchasing a home at his new duty station. Paragraph 2-6.2d of the Federal Travel Regulations, FPMR 101-7 (May 1973), in effect at the time of the employee's transfer, prohibited reimbursement for any fee constituting a finance charge under Regulation Z, 12 C.F.R. 226.4(a). Since a loan origination fee constitutes a finance charge, the employee was not entitled to be reimbursed for any part of the fee unless he submitted a breakdown of items excludable from the definition of a finance charge by 12 C.F.R. 226.4(e).

B-212483 Feb. 23, 1984

*COMPENSATION--PERIODIC STEP-INCREASES--ELIGIBILITY*

In May 1980, employees of the Cuban and Haitian Refugee Program, Department of Health and Human Services, were appointed to Schedule A excepted service positions under the General Schedule for periods not to exceed September

30, 1983. Employees whose appointments were for more than one year, and employees whose initial appointments were not-to-exceed one year or less, with a single extension of more than one year, are eligible for within-grade salary increases under 5 U.S.C. 5335 (Supp. IV 1980), on the same basis as term employees since they occupied permanent positions as defined in OPM regulations.

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

Employees of the Cuban and Haitian Refugee Program whose initial appointments were not-to-exceed one year or less, with extensions for periods not-to-exceed one year or less, are not eligible for within-grade salary increases since they did not hold permanent positions as defined in OPM regulations. Their initial appointments, and extensions, were, singularly, not for periods of more than one year. Any overpayments of pay resulting from granting of within-grade increases to these employees may be considered for waiver under the provisions of 5 U.S.C. 5584 (1982).

*B-212642 Feb. 23, 1984*

*TRANSPORTATION--AUTOMOBILES--OVERSEAS EMPLOYEES--AUTHORITY--  
LACKING*

An employee seeks reimbursement for shipment of an automobile to his new duty station in Hawaii. Shipment at Government expense was not authorized at time of transfer and the employee shipped his automobile at personal expense. An appropriate official at the new duty station authorized shipment of the automobile, and his travel authorization was amended to include this entitlement. However, this amendment to the travel orders was not based upon a new determination of necessity but rather was an attempt to change a determination previously made by an authorized official. Under the general rule that legal rights and liabilities are established at the time authorization is issued and the travel is performed and may not be modified at a later

date to increase or decrease travel allowances, payment based on the amendment after the transportation took place is not authorized.

*B-213316 Feb. 23, 1984*

*ATTORNEYS--FEES--CIVIL SERVICE REFORM ACT OF 1978--MERIT SYSTEMS PROTECTION BOARD DECISIONS--FINALITY*

An employee was discharged from his position on June 15, 1979. Such action was found to be unjustified by the Merit Systems Protection Board (MSPB), which ordered that his separation be canceled. The employee claims entitlement to attorney fees under 5 U.S.C. 7701(g). This Office has no authority to review MSPB decisions, and therefore, the denial under section 7701(g) must stand. If an attorney fees claim is being asserted under 5 U.S.C. 5596(b) (A)(ii), then that claim is also denied, since claimant has not prevailed on any of the backpay computation issues raised with the agency or this Office.

*COMPENSATION--NIGHT WORK--NIGHT DIFFERENTIAL--ENTITLEMENT*

An employee was discharged from his position on June 15, 1979. Such action was found to be unjustified by the Merit Systems Protection Board (MSPB), which ordered that his separation be canceled. Employee claims entitlement to night differential under the MSPB ruling. On restoration, an employee is entitled to the employment status enjoyed at removal and pay and benefits lost as the result of the unjustified removal. Since the employee had been in a day-shift only status on date of removal for reasons totally unrelated to the removal action and was placed in that status upon restoration to duty, he is not entitled to night differential as an item of backpay under the MSPB decision.

*COMPENSATION--PREMIUM PAY--ENTITLEMENT DETERMINATION*

An employee was discharged from his position on June 15, 1979. Such action was found to be unjustified by the Merit Systems Protection Board (MSPB), which ordered that his separation be canceled. The employee

claims that he did not receive Saturday and Sunday premium pay in award. Although not itemized when backpay was paid, employee received premium pay for 1,128 hours based on average hours worked by other employees during the same time at the same employment location. In absence of showing of agency error, we will not question correctness of its computation.

*COMPENSATION--REMOVALS, SUSPENSIONS, ETC.--BACKPAY--UNJUSTIFIED PERSONNEL ACTION REQUIREMENT*

An employee was discharged from his position on June 15, 1979. Such action was found to be unjustified by the Merit Systems Protection Board (MSPB), which ordered that his separation be canceled. Employee claims entitlement to pre-June 15, 1979, backpay and benefits under the MSPB ruling. The only issue before the MSPB was the propriety of the agency removal on June 15, 1979. Since there were no allegations made to the MSPB that the agency had taken other unjustified actions prior to that date, the ruling does not support a backpay claim for an earlier period.

*B-213340 Feb. 23, 1984*

*TRANSPORTATION--TRAVEL AGENCIES--RESTRICTION ON USE--VIOLATIONS BY GOVERNMENT TRAVELERS--REIMBURSEMENT CLAIMS--CRITERIA FOR ALLOWANCE*

A civilian employee of the Department of the Army, unaware of the general prohibition against use of travel agents, purchased transportation for official travel with personal funds from a travel agent. He may be reimbursed, but reimbursement is limited to the travel costs which would have been charged had he obtained his transportation directly from the carrier using a Government transportation request. In this case a special fare was offered for transportation procured with a Government transportation request but since the travel agent could not use a Government transportation request the special fare could not be applied.

B-213901 Feb. 23, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--TEMPORARY QUARTERS--  
VACATING RESIDENCE REQUIREMENT*

A transferred employee may not be reimbursed for the temporary quarters and subsistence expenses incurred by his family on periodic visits to the new duty station while still occupying the family residence at the old duty station. The Federal Travel Regulations require that an employee's family vacate the former residence in order to be eligible for temporary quarters and subsistence expenses.

B-210717.2 Feb. 24, 1984

*OFFICERS AND EMPLOYEES--ETHICS--ACCEPTANCE OF GIFTS, ETC.  
PROHIBITED*

The Defense Logistics Agency may not set up procedures under which promotional benefits that were received by an employee while on official travel on behalf of the Government may be returned to the employee. Pertinent regulations provide for the disposition of these promotional materials and do not provide for returning these benefits to the employee. Furthermore the employee who received these benefits did so on behalf of the Government and has no property right to these benefits.

B-212559 Feb. 24, 1984

*OFFICERS AND EMPLOYEES--ETHICS--ACCEPTANCE OF GIFTS, ETC.  
PROHIBITED*

A bonus ticket received by an employee as a result of trips paid by both appropriated funds while on official travel and personal funds, is the property of the Government and should be turned into the appropriate officials of the Government.

An employee who enters a promotional program and receives a nontransferable free upgrade to first-class service may use such benefits since the Government has no use for such benefits.

B-212335 Feb. 28, 1984

*GENERAL SERVICES ADMINISTRATION--TRANSPORTATION RATE  
AUDIT--SETTLEMENTS*

Where a certifying officer has doubt concerning the propriety of paying a carrier's transportation bills because there is a question as to whether the transportation services were performed as billed, the bill should be forwarded to the General Services Administration for handling under its doubtful claims procedures. Any certification for payment will then be made by the General Services Administration.

*OFFICERS AND EMPLOYEES--TRAINING--EXPENSES--TRAVEL AND  
TRANSPORTATION*

An employee who received per diem incident to a training assignment and, thus, could not have been authorized transportation of household goods for the same assignment, must reimburse the Government to the extent the General Services Administration certifies payment of a carrier's bills for transportation of her household goods performed under an erroneously issued Government bill of lading.

*OFFICERS AND EMPLOYEES--TRAINING--TRANSPORTATION AND/OR  
PER DIEM--ADMINISTRATIVE DETERMINATION*

An employee assigned to long term training may receive temporary duty allowances or permanent change-of-station allowances but not both. When an employee is authorized only temporary duty allowances the issuance of a Government bill of lading for the transportation of an employee's household goods in itself does not provide a basis for finding the agency intended to authorize permanent change-of-station allowances contrary to the terms of the travel order.

*TRANSPORTATION--HOUSEHOLD EFFECTS--GOVERNMENT BILLS OF  
LADING--ERRONEOUS ISSUANCE--LIABILITY*

In the absence of evidence that a Government bill of lading was issued by an official who did not have authority to issue such a document, or that the carrier acted in bad

faith, the Comptroller General will not object to payment of a carrier's bill for transportation of an employee's household goods, even though the employee was not authorized to transport her household goods at Government expense in connection with her training assignment.

*B-213431 Feb. 28, 1984*

*MEDICAL TREATMENT--OFFICERS AND EMPLOYEES--EXAMINATIONS,  
ETC.--AT GOVERNMENT EXPENSE*

The Government may pay for X-rays and laboratory work ordered by the examining physician as part of a fitness-for-duty examination. Since the X-ray and laboratory work was for the benefit of the Government, the employee may be reimbursed amounts she has paid for these services.

*B-213216 March 1, 1984*

*DEBT COLLECTIONS--WAIVER--MILITARY PERSONNEL--EFFECT OF  
MEMBER'S FAULT*

A former Navy petty officer, who was mistakenly overpaid \$75 per month for 12 months, requests that the erroneous payment of \$900 be waived under 10 U.S.C. 2774. The erroneous payment may not be waived because the member should have recognized that he was being overpaid and reported it. His failure to do so indicates fault on his part which, under subsection 2774(b) of title 10, United States Code, precludes waiver.

*B-208397 March 6, 1984*

*OFFICERS AND EMPLOYEES--PROMOTIONS--RETROACTIVE--  
ENTITLEMENT--DELAY IN PROCESSING PERSONNEL ACTION*

Small Business Administration (SBA) employee requests reconsideration of Gregory A. Walter, B-208397, August 29, 1983, which denied his claim for retroactive promotion and backpay. Employee contends he should be granted relief because, as a student trainee under the Cooperative Education Program, he was not properly counseled and because of delay in his promotion. We conclude that the agency's failure to properly advise employee and the delays that occurred did not deprive him

of any rights granted by statute or regulation nor violate any nondiscretionary regulation or policy. Hence, we find no entitlement under the Back Pay Act and our prior decision is sustained.

*B-208911 March 6, 1984*

*ATTORNEYS--FEES--CIVIL SERVICE REFORM ACT OF 1978--PAYMENT NOT IN THE INTEREST OF JUSTICE*

Employee, who was reemployed by Bureau of Alcohol, Tobacco and Firearms following service with Federal Energy Administration, did not receive benefit of highest previous rate rule. Following successful claim with GAO for retroactive pay adjustment, the union representing the employee claimed attorney fees under the Back Pay Act, 5 U.S.C. 5596, as amended. Prior decision disallowing claim for attorney fees is affirmed since the union has not shown that payment is warranted in the interest of justice. Specifically, the union has failed to demonstrate that the agency knew or should have known it would not prevail on the merits, one of the criteria for awarding attorney fees in the interest of justice.

*B-213765 March 6, 1984*

*TRAVEL EXPENSES--FARES--TAXICABS--LIMOUSINE SERVICE FURNISHED*

Employee on temporary duty took a limousine from the airport to her hotel although a hotel courtesy limousine was available. Federal Travel Regulations para. 1-2.3c permits agencies to limit or restrict transportation claims where courtesy transportation is available. However, where the employee was unaware of the availability of the courtesy transportation, her claim for the limousine service she used may be paid.

*B-212818 March 13, 1984*

*TRANSPORTATION--HOUSEHOLD EFFECTS--COMMUTATION--ACTUAL EXPENSES V. COMMUTED RATE--COST IN EXCESS OF COMMUTED RATE--*

A manpower shortage category appointee who was authorized transportation of household goods by Government bill of

lading chose instead to make his own shipping arrangements. He may not be reimbursed for actual expenses in excess of the commuted rate for shipping his household goods to his first duty station on the basis of the Federal Tort Claims Act or under principles of contract law.

*B-210918 March 20, 1984*

*OFFICERS AND EMPLOYEES--TRANSFERS--LEASES--UNEXPIRED LEASE  
EXPENSE--REIMBURSEMENT--GOVERNED BY TERMS OF LEASE*

Prior to a permanent change-of-station transfer, an employee purchased a mobile home to be used as his residence at old station. The purchase was covered by a promissory note and installment loan contract. Under its terms, title remained in seller until note was paid; the mobile home would remain in trailer park until note was paid; and purchaser would pay monthly space rental fee. Employee contends purchase agreement precluded him from moving trailer and claims reimbursement for cost of monthly space rental under FTR para. 2-6.2h for months following transfer. Employee has duty to avoid or minimize such expenses, if possible. Jeffrey S. Kassel, 56 Comp. Gen. 20 (1976). According to agreement, the balance due on note could be prepaid without penalty. Record does not show that employee made any attempt to pay off the remaining balance on the note, which would allow him to move the mobile home, or to take any other action that would have mitigated his costs. Therefore, reimbursement is not authorized.

*B-213385 March 23, 1984*

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

Where employee sells a two-family house incident to a transfer to a new duty station, and both sections are identical in area but only the employee had use of the land, otherwise allowable real estate expenses which are based upon the sale price of the house may be reimbursed to the employee on a pro rata basis calculated in accordance with a formula based on allocation of the total land value to the employee's residence area.

B-213385 March 23, 1984 - Con.

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--REIMBURSEMENT*

Where employee sells a two-family house incident to a transfer to a new duty station, otherwise allowable real estate expenses which are based on a flat fee, without regard to purchase price, should, if reasonable, be reimbursed in full.

B-211295 March 26, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--MISCELLANEOUS EXPENSES--INTERGOVERNMENTAL PERSONNEL ACT EMPLOYEES*

Employee who returned with his family to permanent duty station following an IPA assignment claims a \$200 miscellaneous expense allowance. The provisions of 5 U.S.C. 3375(a)(5) (Supp. III 1979), added by the Civil Service Reform Act of 1978, specifically authorize reimbursement for miscellaneous expenses incurred in connection with IPA assignments if the employee's change of station involves movement of household goods. Since the employee shipped household goods, he may be allowed a \$200 miscellaneous expense allowance as provided under para. 2-3.3a of the Federal Travel Regulations.

*OFFICERS AND EMPLOYEES--TRANSFERS--NONREIMBURSABLE EXPENSES--BOARDING CHILDREN*

Employee boarded his son at location of former residence after employee and his family had returned to permanent duty station following an IPA assignment. Since employee has not submitted evidence of payment of the amount claimed and has not described the circumstances surrounding his son's lodging, he has not met his burden of proving liability on the part of the Government. 4 C.F.R. 31.7 (1983). Accordingly, the claim for his son's lodging expenses is disallowed.

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

Employee who returned with his family to permanent duty station following an IPA assignment claims reimbursement

for the expense of renting a tow bar used to transport a second automobile to official station. The expense is not reimbursable since para. 2-3.1b of the Federal Travel Regulations, FPMR 101-7 (May 1973), defining allowable miscellaneous expenses, does not authorize reimbursement for the rental of a tow bar. Furthermore, the employee was not authorized to transport a second automobile to his permanent duty station.

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

Employee returned to permanent duty station following an IPA assignment and was authorized temporary quarters subsistence expenses for himself and his family. He reclaims amount of meal expenses disallowed by his agency as unreasonable under the Federal Travel Regulations because claimed costs exceeded average costs in valid statistical reference. Employing agency has initial responsibility to determine reasonableness of temporary quarters claimed. Where agency has exercised that responsibility, GAO will not substitute its judgment for that of the agency in the absence of evidence that the agency's determination was clearly erroneous, arbitrary, or capricious.

Employee returned to permanent duty station following an IPA assignment and was authorized temporary quarters subsistence expenses for himself and his family. He reclaims \$15 per day for lodging in the home of a relative. Agency had reduced amount claimed to \$10 per day, based on a voucher previously withdrawn by the employee. While employing agency has initial responsibility to determine reasonableness of temporary quarters claimed, such a determination may not be made arbitrarily and without adequate information to justify the amount arrived at. We find agency's reduction of amount claimed by employee to be without adequate justification. Agency should make new determination of reasonableness based on standards set forth in 52 Comp. Gen. 78 (1972), and other Comp. Gen. decs. cited.

*TRAVEL EXPENSES--CIRCUITOUS ROUTES--PERSONAL CONVENIENCE--  
CONSTRUCTIVE COSTS*

After completing his Intergovernmental Personnel Act (IPA)

assignment in Fullerton, California, an employee and his family moved to Provo, Utah. Their subsequent return travel to Washington, D.C., began in Provo and was routed through Yucaipa, California, for the employee's personal convenience. Agency properly reduced employee's mileage claim to distance between Fullerton and Washington, D.C., since 5 U.S.C. 3375, authorizing travel and transportation expenses in connection with IPA assignments, limits reimbursement for return travel performed by an employee and his family to the constructive cost of travel between the assignment location and the employee's permanent duty station. Employee may, however, be allowed additional mileage to avoid inclement weather.

*B-212837 March 26, 1984*

*SUBSISTENCE--PER DIEM--TRANSFERRED EMPLOYEES--DELAYS*

Employee who performed travel incident to transfer of duty station was delayed by breakdown of automobile. Employee may be allowed per diem and traveltime for period of delay since, during the entire trip, he averaged more than the daily minimum driving distance specified in paragraph 2-2.3d(2) of the Federal Travel Regulations, FPMR 101-7 (May 1973) as amended. However, per diem entitlement is subject to reduction since employee resided with relatives during period of delay, unless he can show that his relatives incurred additional expenses as a result of his stay.

*B-210713 March 28, 1984*

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

An employee's liability for transportation of household goods weighing in excess of the statutory maximum is to be determined on the basis of net weight billed by the carrier, notwithstanding the employee's allegation that six inventoried items were missing from the 1974 shipment of household goods. Although the regulations were subsequently changed, the industry practice prior to 1977 was to charge a shipper freight charges based on the weight certificates without reduction for the portion of household goods lost or destroyed in shipment.

*B-210713 March 28, 1984 - Con.*  
*TRANSPORTATION--HOUSEHOLD EFFECTS--WEIGHT LIMITATION--*  
*EXCESS COST LIABILITY*

Based on an alleged discrepancy between the originally determined net weight and the net weight determined upon reweigh, an employee seeks reconsideration of a Comptroller General decision upholding his liability for excess weight charges for shipment of his household goods from Germany to Michigan in 1974. Since padding and bracing included in original net weight was excluded from net weight determined by reweigh, discrepancy does not provide a basis to set aside either weight certificate and weight of shipment was properly determined on basis of reweigh documentation. Since weight of padding and bracing was not included in that net weight figure, employee is not entitled to reduction in net weight by 15 percent allowance for padding and bracing.

*B-207447 March 30, 1984*  
*INTERGOVERNMENTAL PERSONNEL ACT--ASSIGNMENT OF FEDERAL*  
*EMPLOYEES--LONG-TERM ASSIGNMENT--PER DIEM APPROPRIATE*

Upon reconsideration of decision B-207447, June 30, 1983, the employee may be allowed per diem as authorized by the agency for the period of his extended assignment under the Intergovernmental Personnel Act (IPA). In view of the absence of clear guidance from this Office and the Office of Personnel Management on the authorization of per diem for such assignments at the time the agency authorized the per diem, the authorization of per diem is deemed to be valid. However, the principles set out in the June 30, 1983 decision and recent Office of Personnel Management guidance should be followed for subsequent IPA assignments.

The following case was inadvertently omitted from the previous issue:

B-212478 Dec. 19, 1983

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

An employee received erroneous payments of basic pay and non-foreign area differential which were shown on his biweekly leave and earnings statements. Overpayments may not be waived since employee knew or should have known from substantial increase in pay and from examination of his leave and earnings statements and personnel records that errors had been made. Such actual or presumptive knowledge on employee's part carries with it obligation to bring matter to attention of appropriate official and to return excess sum or set it aside for refund at such time as error is corrected.

*MILITARY PERSONNEL*

*B-212353 Jan. 17, 1984*

*ORDERS--AMENDMENT--RETROACTIVE--TRAVEL COMPLETED*

Wife and children of Army officer stationed at Camp Zama, Japan, were transported from Japan to Kansas City, Missouri, under orders issued in May 1981 authorizing an early return of dependents from overseas. In August 1981 they traveled from Kansas City to Marshfield, Missouri, where they established new residence. In absence of facts clearly demonstrating that May 1981 orders were materially in error when prepared in designating Kansas City rather than Marshfield as their intended destination in U.S., officer may not be reimbursed for expense of their further travel from Kansas City to Marshfield on basis of those orders, since travel orders may not be amended retroactively to increase travel allowances except when plain error in orders' preparation is shown.

*TRANSPORTATION--DEPENDENTS--MILITARY PERSONNEL--ADVANCE TRAVEL OF DEPENDENTS--PRIOR TO ISSUANCE OF ORDERS*

Because of general information received by Army officer that he would probably be reassigned to Fort Leonard Wood, Missouri, his dependents moved from Kansas City to Marshfield, Missouri, in August 1981 to establish a residence near that post. A month later permanent change-of-station orders were in fact issued reassigning officer to Fort Leonard Wood, but reimbursement of expenses of family's early move to Marshfield may not be allowed on basis of those orders. The rule is that expenses of dependent travel performed prior to issuance of anticipated permanent change-of-station orders are nonreimbursable unless claim is supported by written statement from order-issuing authority verifying service member's receipt of specific advance notification that orders definitely would be published.

*TRAVEL EXPENSES--MILITARY PERSONNEL--RETIREMENT--TO  
SELECTED HOME--RESIDENCE ESTABLISHMENT*

Army officer retired from active service in May 1982, and since then he has continued to reside with his family in Marshfield, Missouri, where they had previously established permanent residence in 1981. No payment may be made on officer's claim based on his retirement orders for reimbursement of expenses of family trip from Kansas City to Marshfield in August 1982. Service member is generally entitled to transportation to his home of selection within 1 year of his retirement, but no reimbursement is allowable for expenses of pleasure trips, etc., which are undertaken after retirement for purposes other than change of residence.

*B-212481 Feb. 2, 1984*

*PAY--RETIRED--FOREIGN CITIZENSHIP EFFECT*

A retired member of the Armed Forces who becomes a citizen of a foreign country by naturalization and who voluntarily renounces his United States citizenship loses the right to retired pay since entitlement to retired pay depends upon the continuation of the individual's status as a retired member of the military service available for service as required and that status is incompatible with renunciation of United States citizenship. However, such a person who elected to participate in the Survivor Benefit Plan and from whose retired pay the required deductions were being made for coverage under the Plan when he renounced his U.S. citizenship, may continue coverage under the Plan by making the required payments into the Treasury.

*B-214017 Feb. 23, 1984*

*STATION ALLOWANCES--MILITARY PERSONNEL--DEPENDENTS--  
CHILDREN--ADOPTED*

An Army officer claims basic allowance for quarters and variable housing allowance at the with-dependents rates on account of her adopted son during the probationary

pre-adoption period (prior to the court's entry of a final adoption order), as the child resided in her household during that time. She is not entitled to the allowances claimed because under the controlling state (Alabama) adoption statutes, a legal adoption had not been effected during that period.

*B-213654 March 6, 1984*

*LEAVES OF ABSENCE--MILITARY PERSONNEL--PAYMENTS FOR UNUSED LEAVE ON DISCHARGE, ETC.--ADJUSTMENT ON BASIS OF RECORD CORRECTION--LEAVE RECORDS DESTROYED*

A former Navy member claims payment based on unused accrued leave at the time of his discharge in 1955 as a result of an administrative action changing the character of his discharge from other than honorable to under honorable conditions. The claim is disallowed since in the intervening period, all Government records which might establish how many days of accrued leave, if any, he had at the time of his discharge, were lost or destroyed. The burden of proof of entitlement absent such Government record is on the claimant and he is unable to furnish evidence that he had leave to his credit.

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