

QUARTERLY DIGESTS OF UNPUBLISHED DECISIONS OF
THE COMPTROLLER GENERAL OF THE UNITED STATES



117096

PERSONNEL LAW

CIVILIAN PERSONNEL

APRIL-JUNE 1981



UNITED STATES GENERAL ACCOUNTING OFFICE
OFFICE OF THE GENERAL COUNSEL
INDEX-DIGEST SECTION

019735

UNITED STATES GENERAL ACCOUNTING OFFICE

MILTON J. SOCOLAR

Acting Comptroller General of the United States

VACANT

Deputy Comptroller General
of the United States

HARRY R. VAN CLEVE

Acting General Counsel

April through June 1981

Contents

	<u>Page</u>
<i>Table of Decisions</i>	<i>I</i>
<i>Digests</i>	<i>1</i>
<i>Index</i>	<i>i</i>

*Compiled in the
Index-Digest Section
Office of the General Counsel*

TABLE OF DECISIONS

April through June 1981

	<u>Page</u>		<u>Page</u>
B-191386	Apr. 6... 2	B-199913	June 30.... 32
B-191696	June 22... 28	B-199944	Apr. 16.... 6
B-192522	Apr. 22... 9	B-199958	Apr. 22.... 10
B-193401	May 5... 15	B-200040	May 6.... 16
B-194020	May 12... 19	B-200079	Apr. 3.... 2
B-194794	May 5... 15	B-200173	Apr. 9.... 4
B-195029	June 22... 29	B-200256	May 20.... 20
B-195373,		B-200295	Apr. 28.... 13
B-200743	May 12... 19	B-200305	Apr. 23.... 11
B-195406	May 11... 18	B-200403	Apr. 27.... 12
B-196294	June 1... 21	B-200450	June 18.... 27
B-197134	June 18... 27	B-200479	Apr. 16.... 7
B-197533	Apr. 3... 1	B-200615	June 15.... 25
B-197605	June 25... 31	B-200639	Apr. 15.... 5
B-197631	Apr. 23... 10	B-200669	May 6.... 17
B-197645	May 21... 20	B-200795	May 26.... 21
B-197670	Apr. 16... 5	B-200838	Apr. 21.... 8
B-197816	June 24... 30	B-200852	June 24.... 31
B-197886	June 24... 30	B-201009	Apr. 16.... 7
B-197981	May 8... 17	B-201043	June 26.... 32
B-198040	June 19... 28	B-201080	May 6.... 17
B-198062	June 23... 29	B-201253	May 26.... 21
B-198336	June 9... 23	B-201256	Apr. 27.... 12
B-198399	Apr. 6... 3	B-201301	June 9.... 23
B-198473	May 4... 14	B-201321	June 10.... 25
B-198576	June 10... 24	B-201436	Apr. 16.... 8
B-198760	Apr. 27... 12	B-201602	Apr. 1.... 1
B-198775	Apr. 16... 6	B-201628	May 21.... 20
B-198930	Apr. 6... 3	B-201732	June 30.... 32
B-198937	Apr. 15... 4	B-201767	June 24.... 31
B-198939	Apr. 3... 2	B-201776	June 17.... 26
B-199114	Apr. 28... 13	B-201812	June 9.... 24
B-199193	Apr. 22... 9	B-201861	Apr. 1.... 1
B-199250	Apr. 15... 4	B-201862	Apr. 30.... 14
B-199432	June 16... 25	B-201936	Apr. 21.... 8
B-199461	Apr. 15... 5	B-201945	June 4.... 23
B-199525	May 6... 16	B-201946	June 16.... 26
B-199594	June 17... 26	B-202392	May 11.... 18
B-199843	Apr. 29... 13	B-202440	June 17.... 27

TABLE OF DECISIONS - Con.

	<u>Page</u>		<u>Page</u>
B-202540	May 11... 19	B-202734	June 30... 33

DECISIONS OVERRULED AND MODIFIED

59 *Comp. Gen.* 699 (1980), modified (extended) by B-201256, Apr. 27, 1981.

B-166678, May 23, 1969, overruled in part by B-196294, June 1, 1981.

B-187921, Nov. 18, 1977, overruled in part by B-198062, June 23, 1981.

B-196294, Aug. 19, 1980, modified in part by B-196294, June 1, 1981.

April through June 1981

B-201602 Apr. 1, 1981

LEAVES OF ABSENCE--COURT--ENTITLEMENT--COMPLAINTS UNDER
CIVIL RIGHTS ACT--DISCRIMINATION ALLEGED

Employee who was unsuccessful litigant in civil rights action in Federal court was granted court leave by agency contrary to 59 Comp. Gen. 290 (1980). Although agency was unaware of decision, agency must retroactively correct employee's leave record. The decision is controlling even though Office of Personnel Management instruction reflecting that holding was not issued until after agency had erroneously granted leave in question.

B-201861 Apr. 1, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
TEMPORARY QUARTERS--LEASED QUARTERS PRIOR TO HOUSE PURCHASE

Temporary quarters subsistence reimbursement is denied for period employee rented home he intended to purchase as his permanent residence.

B-197533 Apr. 3, 1981

COMPENSATION--OVERTIME--INSPECTIONAL SERVICE EMPLOYEES--PART
TIME WAE EMPLOYEES

Decision B-197533, July 1, 1980, did not change rule set forth in 49 Comp. Gen. 577 (1970) that part-time immigration inspectors are entitled to 2 days extra pay under 8 U.S.C. 1353a for Sunday and holiday work. Statement in B-197533 July 1, 1980, that part-time inspectors with regularly scheduled administrative workweek should be compensated for overtime on Sundays and holidays under Federal Employees Pay Act of 1945 was referring to hours of work in excess of 8 hours on such days.

B-198939 Apr. 3, 1981

*INTERGOVERNMENTAL PERSONNEL ACT--ASSIGNMENT OF FEDERAL &
EMPLOYEES--MISCELLANEOUS EXPENSE ALLOWANCE--NOT APPLICABLE*

Employee returned to permanent duty station following Intergovernmental Personnel Act (IPA) assignment and was reimbursed for miscellaneous expenses allowance. However, statute authorizing certain relocation expenses incident to IPA assignment (5 U.S.C. 3375) does not permit reimbursement for miscellaneous expenses.

*OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
TEMPORARY QUARTERS--FAMILY DID NOT JOIN EMPLOYEE*

Employee returned to permanent duty station following Intergovernmental Personnel Act assignment and was authorized temporary quarters reimbursement. Family did not join employee for 1-1/2 years but claim for temporary quarters reimbursement for family may not be denied. Notwithstanding policy to limit or deny temporary quarters where employee arrives before family, travel orders may not be modified retroactively by agency to deny reimbursement.

B-200079 Apr. 3, 1981

*SUBSISTENCE--PER DIEM--"LODGINGS-PLUS" BASIS--STAYING WITH
FRIENDS, RELATIVE, etc.*

Where employee who stayed with parents while on temporary duty submitted breakdown of parents' costs which appears to agency not to represent actual costs, employee may be required to submit additional information explaining or substantiating expenses before claim is paid.

B-191386 Apr. 6, 1981

COMPENSATION--PROMOTIONS--WHITTEN RIDER RESTRICTION

Employee claims time-in-grade credit for first 120 days of detail to higher-grade position for which he was awarded retroactive temporary promotion. First 120 days of detail to higher-grade position are not to be counted as part of time-in-grade requirement of Whitten Amendment.

B-191386 Apr. 6, 1981 - Con.

*DETAILS--*COMPENSATION--HIGHER GRADE DUTIES ASSIGNMENT--
EVIDENCE TO SUPPORT--SUFFICIENCY*

Retroactive temporary promotion from GS-7 to GS-9 is denied, since there is no evidence that employee performed all principal duties of established and classified position at GS-9 level.

B-198399 Apr. 6, 1981

SUBSISTENCE--PER DIEM--RATES--REDUCTION--EFFECTIVE DATE

Employee claims additional per diem allowance based on fact that when he left for temporary duty in Germany, in August 1979, per diem rate for Heidelberg was \$68. However, September 1979, change in Trav. Reg. reducing per diem rate for Heidelberg, to \$48 effective as of June 1, 1979, was based on State Department regulations, issued in June 1979, which made \$48 per diem rate effective as of June 1, 1979. Employee's ignorance of changed rates is irrelevant since amendatory regulation changing per diem rates has force and effect of law.

B-198930 Apr. 6, 1981

SUBSISTENCE--PER DIEM--RATES--REDUCTION--EFFECTIVE DATE

Civilian employee of AID performed temporary duty travel in Kinshasa, Zaire, from January 24 to February 10, 1979, and was authorized reimbursement of actual subsistence expenses. Effective February 1, 1979, based upon information from American Embassy of currency devaluation in Zaire, Secretary of State reduced actual expense rate from \$106 to \$75 in Kinshasa. However, upon delayed receipt in February 1979 of information that prices had increased simultaneously with devaluation, Secretary increased rate in Kinshasa to \$111, effective March 1, 1979. Rate decrease in February was caused by administrative error on part of Embassy in failing to furnish State Department with timely information of concomitant price increases. Accordingly, prior rate is deemed to continue in effect through period of travel and employee is entitled to reimbursement of additional subsistence expenses.

B-200173 Apr. 9, 1981

*OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
HOUSE SALE--PRO RATA EXPENSE REIMBURSEMENT*

Transferred employee sold 80 acre farm on which he resided at old duty station in two parcels. One parcel was 66 acres of agriculture and swamp land and other was 14 acres containing residence, garage, storage shed, machine shed and barn. Real estate expenses attributable to sale of 14 acre parcel are reimbursable to extent authorized by FTR 2-6 and to extent it is determined they are attributable to sale of real estate reasonably related to residence site. This determination must initially be made by agency in accordance with guidelines prescribed by this Office.

B-198937 Apr. 15, 1981

*TRAVEL EXPENSES--TRANSFERS--GOVERNMENT v. EMPLOYEE INTEREST--
AUTHORIZATION REQUIREMENT*

Social Security Administration (SSA) employee in Arlington, Virginia, requested transfer at same grade to SSA office in Fort Lauderdale, Florida. Employee was detailed to position in Fort Lauderdale office from May 31 to September 1, 1977. There was verbal understanding with agency officials that travel expenses would not be at Government expense and no written travel order was issued. Employee seeks reimbursement of per diem, travel expenses, and restoration of annual leave. Since claimant requested detail and decided that detail, and possibly subsequent permanent transfer, was in his interest as well as in interest of Govt. and in absence of written travel order authorizing or approving reimbursement, is not obligated to pay employee's travel expenses.

B-199250 Apr. 15, 1981

*DETAILS--COMPENSATION--HIGHER GRADE DUTIES ASSIGNMENT--
EVIDENCE TO SUPPORT--SUFFICIENCY*

Employee claims that assignment of higher-level duties resulted in his performing work substantially equal to that of higher-grade position. Where claimant has not established that he was detailed to higher-grade posi-

tion, general rule applies that employee is entitled only to salary of position to which he has been appointed regardless of duties he may perform. Since employee did not prove fact of detail, claim is denied.

B-199461 Apr. 15, 1981

COMPENSATION--DOWNGRADING--SAVED COMPENSATION--EFFECT OF CIVIL SERVICE REFORM ACT OF 1978

Employee of FAA accepted "career progression downgrade assignment" in May 1979, after FAA advised he would be entitled to salary retention. Statute and regulations governing salary retention were superseded effective January 1979, by statute and regulations governing pay retention which, under circumstances, provides lesser monetary benefit to employee. Employee is entitled only to pay retention and may not receive additional compensation due to erroneous advice of agency officials.

B-200639 Apr. 15, 1981

COMPENSATION--MISSING, INTERNED, CAPTURED, etc., EMPLOYEES--OVERTIME--ENTITLEMENT

Navy employee who received 25 percent premium pay based on scheduled duty including standby duty of 168 hours per pay period may not be paid overtime compensation in addition to 25 percent premium pay under Missing Persons Act, 5 U.S.C. 5562, even though record shows he was scheduled for duty in excess of 168 hours before being captured by hostile forces in Vietnam. Scheduled duty in excess of 168 hours was either regularly scheduled and thus not compensable in addition to standby premium pay or was irregular and could not have been basis for continued overtime pay after he was captured.

B-197670 Apr. 16, 1981

PROPERTY--PRIVATE--DAMAGE, LOSS, etc.--CARRIER'S LIABILITY--GENERALLY

Where Government paid commercial rates without agreement to declare released valuation, carrier is liable at common law for full value in event shipment is lost or damaged in transit.

B-197670 Apr. 16, 1981 - Con.

TRANSPORTATION--HOUSEHOLD EFFECTS--INSURANCE--LIABILITY FOR EXCESS VALUATION

Under FTR, Federal employee may declare valuation above carrier's minimum released valuation, but he must bear additional costs of coverage.

Liability of employee for insurance charges is matter between carrier and employee where evidence suggests employee independently contracted for additional insurance.

B-198775 Apr. 16, 1981

SUBSISTENCE--NECESSARY EXPENSES OF SUBSISTENCE REQUIREMENT

Employee on temporary duty travel who was authorized actual subsistence expenses claims breakfast expense incurred in returning home. Breakfast expense is not necessary expense of official travel prudently incurred when employee, instead of having breakfast meal at home at customary time, elects on basis of personal preference to purchase meal at train station at 12:30 a.m. while still in travel status.

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

Employee on temporary duty assignment to New York City who was authorized actual subsistence expenses claimed reimbursement of dinner expense. Agency determined this expense was not prudently incurred and disallowed entire amount of employee's dinner expense. Total disallowance was improper because agency has duty in first instance to determine what constitutes reasonable amount for meal expenses. Dinner voucher is returned for agency action. When agency makes that determination, we will not overturn it unless its determination is clearly erroneous, arbitrary, or capricious.

B-199944 Apr. 16, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--TAXES--SERVICE FEES

Employee who purchased residence incident to transfer was charged by lender tax service fee which was not listed as finance charge on Truth-in-Lending Statement. Fee for tax search to be performed periodically throughout term of mortgage to check for tax delinquencies and liens is finance charge and may not be reimbursed under paragraph 2-6.2d of Fed. Trav. Reg., even though otherwise characterized by lender.

B-200479 Apr. 16, 1981

*TRANSPORTATION--HOUSEHOLD EFFECTS--COMMUTATION--ACTUAL EXPENSES
2. COMMUTED RATE--ADMINISTRATIVE DETERMINATION*

Transferred employee was authorized reimbursement for shipment of household effects at commuted rate on intrastate transfer. Employee's claim for charge by mover for expedited or special service which exceeds commuted rate may not be allowed. Under commuted rate system there is no authority to pay transportation charges in excess of those provided under that system. Although actual expense method may be used in intrastate transfers where unusual hardship of employee may result, no administrative determination was made to authorize actual expense method.

B-201009 Apr. 16, 1981

*OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--HOUSE
SALE--ESCROW FEE*

Because mortgage financing was unavailable, transferred employee sold his house at old duty station by real estate contract. Under contract purchaser agreed to make monthly payments and employee, as seller, agreed to transfer title upon payment in full. To handle future payments, employee entered into escrow agreement whereby buyer was to make monthly payments to escrow agent, and escrow agent was to make mortgage payments for which employee remained liable. Employee may not be reimbursed for cost of escrow agreement as agreement is solely for employee's convenience and not directly related to sale itself.

TRANSPORTATION--AUTOMOBILES--LAND TRANSPORTATION

Employee of U.S. Army who was transferred from Tacoma, Washington, to Indianapolis, Indiana, who traveled by air with his family, may not be reimbursed for cost of shipping automobile by commercial carrier.

B-201009 Apr. 16, 1981 - Con.

TRANSPORTATION--AUTOMOBILES--LAND TRANSPORTATION

Employee of U.S. Army who was transferred from Tacoma, Washington, to Indianapolis, Indiana, who traveled by air with his family, may not be reimbursed for cost of shipping automobile by commercial carrier.

B-201436 Apr. 16, 1981

COMPENSATION--OVERTIME--STANDBY, etc. TIME--DUTY OFFICERS

Bureau of Alcohol, Tobacco, and Firearms agent claims overtime compensation for overtime during period he states he was scheduled to work 12-hour days. Agency advises that upon completion of 8-hour day employee was "on-call" to report for duty if needed and that he was to indicate where he could be contacted. Employee is not entitled to overtime compensation as his activities and movements were not restricted. Where there is irreconcilable dispute over facts between individual claimant and agency we are bound to accept agency's statement of facts.

B-200838 Apr. 21, 1981

FRAUD--FALSE CLAIMS--FRAUDULENT ITEMS AS VITIATING ENTIRE VOUCHER

Employee on temporary duty submitted fraudulent lodging receipts in excess of what he actually rented apartment for. He states that since he did incur expenses incident to his temporary duty, recoupment against him for 46 days of per diem should be reduced by other expenses he incurred which would otherwise have been allowed. Since fraudulent lodging receipts covered 46 days, reduction of recoupment against him is denied as fraudulent claim for lodgings will taint all other aspects of subsistence or per diem claimed for day for which fraudulent lodgings claim was submitted.

B-201936 Apr. 21, 1981

STATUTES OF LIMITATION--CLAIMS--DATE OF ACCRUAL

Certifying officer requesting advance decision from this Office should submit signed voucher with his request since Barring Act, 31 U.S.C. 71a (1976), pre-

cludes consideration of claim not received in this Office within six years after claim first accrued. Only signed claim of employee, bearing his address, will toll Barring Act. Properly signed voucher would serve this purpose.

B-201936 Apr. 21, 1981 - Con.

STATUTES OF LIMITATION--CLAIMS--DATE OF ACCRUAL--COMPENSATION PAYMENTS--BACK PAY

Employee's claim for retroactive temporary promotion from April 16, 1973, until March 30, 1975, is time barred prior to February 9, 1975. Although employee filed claim with his agency dated May 20, 1980, Barring Act 31 U.S.C. 71a (1976), requires that claim be received in GAO to toll act. Moreover, certifying officer's later request as to propriety of paying employee does not toll act since certifying officer did not send claim or signed voucher with his request. Only when employee's claim was received in GAO on February 9, 1981, was Barring Act tolled. Employee may be paid on his claim from February 9, 1975, until March 30, 1975.

B-192522 Apr. 22, 1981

TRAVEL EXPENSES--AIR TRAVEL--FLY AMERICA ACT--EMPLOYEE'S LIABILITY--TRAVEL BY NONCERTIFICATED AIR CARRIERS

Employee who travels overseas on foreign air carrier where there is no showing that certificated U.S. air carriers were not available to transport him is in violation of Fly American Act and is personally liable for the cost.

B-199193 Apr. 22, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--HOUSE PURCHASE--RECORDING FEES

Employee may be reimbursed for recording fees if they are customarily paid by purchaser in the area and do not exceed amounts customarily charged in the locality. FTR para. 2-6.2c. Employee's residence for the allowance of expenses incurred in connection with residence transactions may be a mobile home and/or the lot on which it is or will be located. FTR para. 2-6.1b.

B-199193 Apr. 22, 1981 - Con.

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
HOUSE SALE--PRO RATA EXPENSE REIMBURSEMENT

In order to expedite sale, transferred civilian employee sold property at old duty station in two parcels to two separate buyers. Claim for real estate expenses of parcel containing house was paid but expenses associated with parcel not containing house were disallowed by Treasury. Reclaim voucher for real estate expenses of parcel without house may not be paid since parcel of land other than that upon which house is located does not reasonably relate to residence site as required by para. 2-6.1f of Federal Travel Regulations.

B-199958 Apr. 22, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
TEMPORARY QUARTERS--PERMANENT DWELLING OCCUPANCY

Employee and family are not entitled to temporary quarters subsistence expenses for meals while occupying quarters leased as permanent residence at new duty station and while awaiting arrival of household goods.

B-197631 Apr. 23, 1981

COMPENSATION--PROMOTIONS--TEMPORARY--DETAILED EMPLOYEES--
RETROACTIVE APPLICATION

Employee is entitled to retroactive temporary promotion after 120th day of detail to higher-level position for continuous period of detail. Although agency contends higher-level position was abolished during part of detail period, employee has submitted persuasive evidence to the contrary. We find position was continuing one and that employee performed higher-level duties during entire period of detail. Therefore, employee is entitled to backpay under Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 Comp. Gen. 427 (1977).

B-197631 Apr. 23, 1981 - Con.
STATUTES OF LIMITATION--CLAIMS--GENERAL ACCOUNTING OFFICE--
EFFECT OF TIME LIMITATION--CLAIM BARRED

Agency submitted claim for backpay to GAO on December 5, 1977, and it was received on December 12, 1977. Under 31 U.S.C. 71a (1976), claim against the U.S. is barred unless presented to this Office within 6 years from date claim accrues. Therefore, we may not consider any element of claim accruing before Dec. 12, 1971.

B-200305 Apr. 23, 1981
SUBSISTENCE--PER DIEM--RATES--LODGING COSTS

Employee traveling on actual expense basis finished temporary duty at 6:15 p.m. on Thursday but did not depart temporary duty station until 12:55 a.m. Friday when he traveled to another city on personal business. Since employee incurred no expense for lodging on Thursday, he may not be reimbursed hypothetical cost of lodgings for that night. However, because employee's constructive cost reimbursement should be based on direct return travel scheduled following morning, lodging costs for that night may be included in determining his constructive expense limitation.

TRAVEL EXPENSES--CONSTRUCTIVE TRAVEL COSTS--COMPUTATION

Employee who finishes temporary duty at 6:15 p.m. ordinarily should not be required to perform return travel that same night. Thus, employee who interrupts return travel for personal reasons and travels by indirect route, departing late that night should not have constructive costs comparison made on basis of night coach rate for flight departing that same evening. Constructive cost comparison should be based on schedule that permits employee to travel during regular duty hours the following morning.

B-198760 Apr. 27, 1981

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

Waiver of overpayments is granted where agency improperly fixed employee's step rate upon promotion. Relatively small overpayments each pay period would have been difficult for employee to discover, since he was located at work sites away from office which made errors. Difficulty was compounded by his second promotion and by cost of living increases granted shortly after promotions. Further, employee was not in position to know pay regulations.

B-200403 Apr. 27, 1981

*CLAIMS--EVIDENCE TO SUPPORT--BURDEN OF PROOF--CLAIMANT'S
RESPONSIBILITY*

Employee who was detailed from grade GS-9 to grade GS-11 position claims he continued to perform grade GS-11 duties after grade GS-10 position was classified and he was promoted to it. Claim is denied since employee's evidence does not support his claim.

COMPENSATION--PROMOTIONS--TEMPORARY--RETROACTIVE

Employee who was detailed from grade GS-9 to grade GS-11 position for 19 months, received retroactive temporary promotion under our Turner-Caldwell decisions. Employee was then promoted to grade GS-10 position but claims promotion to grade GS-11. Claim is denied since promotions are discretionary in absence of nondiscretionary policy or regulation governing promotions.

B-201256 Apr. 27, 1981

TRAVEL EXPENSES--OVERSEAS EMPLOYEES--RENEWAL AGREEMENT TRAVEL

Employee of National Weather Service stationed in Valdez, Alaska, applied for and was selected for merit promotion to San Antonio, Texas. Employee reclaims cost of tour renewal travel which was deducted from his relocation expenses for failure to fulfill renewal agree-

ment. Employee may be reimbursed cost of tour renewal travel as transfer incident to merit promotion is not violation of overseas tour renewal agreement. 59 Comp. Gen. modified (extended).

B-199114 Apr. 28, 1981

LEAVES OF ABSENCES--SICK--ADVANCES--ADMINISTRATIVE DETERMINATION

Employee claims backpay for period before disability retirement when agency terminated advance sick leave and placed employee on leave without pay pending retirement. Advance sick leave may be granted at discretion of employing agency. Hence, agency's decision to terminate advance sick leave and to place employee on leave without pay for absences from work after employee applied for disability retirement will not be disturbed. Claim is denied.

B-200295 Apr. 28, 1981

DEBT COLLECTIONS--WAIVER--CIVILIAN EMPLOYEES--EFFECT OF EMPLOYEE'S FAULT

Employee received excess foreign allowances through administrative error. Though foreign allowances owed to the employee fluctuated, the employee should have been on notice of possible overpayment when he began to receive allowance approximately 3 1/2 times the amounts he had been receiving. Request for waiver is denied since his failure to make inquiry about such large discrepancies indicates that he was partially at fault. Gross amount of overpayment must be considered under our waiver authority.

B-199843 Apr. 29, 1981

COMPENSATION--PROMOTION--RETROACTIVE--RULE

Employee appeals Claims Division settlement denying request that his promotion to GS-11 effective Oct. 4, 1970, be made retroactive to June 28, 1970. Employee alleges that delay in promotion is arbitrary and capricious. Granting of promotions is discretionary matter primarily within province of administrative agency involved. Salary increases may not be made retroactive

absent statutory authority. We have made exceptions to this rule where through administrative or clerical error^x personnel action was not effected as originally intended, where nondiscretionary administrative regulations or policies have not been carried out, where administrative error has deprived employee of right granted by statute or regulation, or where agency has through collective bargaining agreement vested in employee right to be promoted after specified period. Employee may not be retroactively promoted since he has not established that his situation falls within one of exceptions to general rule against retroactive promotions.

B-201862 Apr. 30, 1981

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

Employee's appeal for waiver of overpayment of salary resulting from premature within-grade increase must be denied. GS-12 employee with 20 years or more Govt. service should have been aware that after promotion to higher grade, he was not eligible for within-grade increase for year. Further, when he authorized deduction from pay for prior overpayment and instead received increase, he was on notice of error. Since employee made no inquiry concerning these matters, he was not without fault and does not qualify for waiver.

B-198473 May 4, 1981

CLASSIFICATION--RECLASSIFICATION--EFFECTIVE DATE--RETROACTIVE

Army employee, downgraded from GS-13 to GS-12 following relocation and reclassification of position, contends he continued to perform duties of GS-13 position for 18 months. Employee did not file timely classification appeal but now requests retroactive restoration of position to original location and classification, correction of records, and backpay. Claim denied. Classification actions may not be retroactive except in timely successful appeals of downgradings. Agency classification actions are basis for pay and personnel transactions until changed by CSC/OPM. General rule is that employee is entitled only to pay of position to which officially assigned and back pay may not be granted for periods of alleged wrongful classification.

B-193401 May 5, 1981

SUBSISTENCE--PER DIEM--TEMPORARY DUTY--NEW EMPLOYEE PRIOR TO REPORTING TO FIRST DUTY STATION

New employee was assigned to temporary duty in Washington, D.C., area prior to reporting to first duty station overseas. Because employee commuted from permanent residence to training sites agency questions employee's entitlement to subsistence. Decisions of this Office and of courts hold that employee is not entitled to per diem or subsistence allowance where he/she commutes to temporary duty station from permanent residence and incurs no additional expense.

Agency questions whether new appointees who are assigned to Washington, D.C., area for temporary duty prior to reporting to overseas duty station are entitled to subsistence allowance. Both new hires and transferees may be authorized subsistence at Washington, D.C., since, under circumstances presented, it is training or temporary duty site, not permanent duty station, and employee would undoubtedly incur additional expenses.

B-194794 May 5, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--HOUSE PURCHASE--LOAN ORIGINATION FEE--FINANCE CHARGE

Employee's claim for loan origination fee and amounts placed into escrow for future taxes and insurance is denied. FTR para. 2-6.2d does not permit reimbursement of items determined to be finance charges under the Truth in Lending Act, property taxes, or insurance.

B-199525 May 6, 1981

*SUBSISTENCE--PER DIEM--RATES--LODGING COSTS--APARTMENT
RENTAL--DEPENDENTS WITH EMPLOYEE*

Employee whose dependents reside with him in leased apartment at temporary duty location may not be denied actual subsistence expenses merely because he does not maintain residence at permanent duty station. Rent may be reimbursed as cost of lodging without reduction for fact that apartment was larger than employee alone needed. Costs of rental furniture not in excess of employee's own needs may be reimbursed as cost of lodging.

*TRANSPORTATION--DEPENDENTS--TRANSFERS--DEPENDENTS TRAVELED
FROM VACATION POINT*

Where dependents had resided with employee at temporary duty site but were living elsewhere at date employee was notified of transfer to temporary duty location, employee is entitled to be reimbursed for their transportation to new duty station in amount not to exceed cost of dependents' transportation from old to new duty station. Similarly, expenses for transportation of household goods from place of storage may be reimbursed in amount not to exceed cost of transporting goods between old and new station.

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

Temporary quarters allowance may not be paid to employee who, prior to transfer, had been detailed to area of new duty station where he and his family continued to occupy rental apartment in which they had resided during detail. Neither employee nor his family vacated residence in which they were residing at time transfer was authorized.

B-200040 May 6, 1981

*TRAVEL EXPENSES--ACTUAL EXPENSES--REIMBURSEMENT BASIS--
LODGING--OFFICIAL BUSINESS CONDUCTED IN ROOM*

Employee on temporary duty to high-cost geographical area for purposes of recruiting new employees for his agency rents room in hotel as his personal lodging and

in which he also conducts interviews of prospective candidates for employment. Employee may not be reimbursed for all or part of rental of room as necessary expense of conducting Govt. business rather than as part of his actual expense for lodging since he incurred no extra expense for such lodging due to the interviews conducted there.

B-200669 May 6, 1981

COMPENSATION--PROMOTIONS--TEMPORARY--RETROACTIVE--RULE

Agency improperly evaluated GS-3 employee's prior experience when employee applied for new position under merit promotion procedures causing employee to be selected for new position at GS-3 grade instead of GS-4. Employee is not entitled to retroactive promotion since error did not prevent personnel action from taking effect as originally intended, employee was not deprived of right granted by statute or regulation, nor was nondiscretionary agency regulation or policy violated.

B-201080 May 6, 1981

COMPENSATION--PROMOTIONS--TEMPORARY--RETROACTIVE

National Guard Avionics Technician, WG-12, performed all duties of Avionics Supervisor position after that position became vacant. Record shows that he was assigned and performed all duties of officially established position, and therefore he was detailed to position and he is entitled to retroactive temporary promotion and backpay pursuant to Turner-Caldwell.

B-197981 May 8, 1981

COMPENSATION--REMOVALS, SUSPENSIONS etc.--BACK PAY--ENTITLEMENT--UNJUSTIFIED OR UNWARRANTED REMOVAL REQUIREMENT

Employee, nonveteran in excepted service, alleges that her removal in 1977 was substantively and procedurally defective and she seeks backpay and payment for accrued annual and sick leave. Allegations regarding defectiveness of removal are not within jurisdiction of this Office but were matters for employing agency and C.S.C. Therefore, for purposes of adjudicating claim, removal

must be deemed justifiable which precludes backpay and recrediting of annual or sick leave. Employee received a lumpsum payment for annual leave at separation pursuant to law and sick leave to her credit was used in determining her disability retirement annuity.

B-195406 May 11, 1981

UNIONS--FEDERAL SERVICE--DUES--ALLOTMENT FOR--AGENCY FAILURE TO DISCONTINUE--RECOUPMENT OF PAYMENTS

Accounting and Finance Officer inquires whether Govt. may reimburse employee for union dues allotment which was continued after employee was promoted to foreman position. Since record shows that employee diligently attempted to have allotment terminated on several occasions after promotion, he is entitled to reimbursement of improperly withheld allotment. Since union was without fault in continuing to receive what had been properly authorized allotment, amount due Govt. under 54 Comp. Gen. 921 (1975) is waived under provisions of 5 U.S.C. 5584 (1976). 59 Comp. Gen. 710, distinguished.

B-202392 May 11, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--TAXES--FEDERAL INCOME TAX CREDIT

Employee transferred in 1977 sold residence at old station for which he had received Federal income tax credit in 1975, year in which he had purchased house as newly constructed residence. Employee may not be reimbursed amount of income tax credit recaptured under 26 U.S.C. 44(d) when newly constructed residence was sold within 36 months of purchase. Under 5 U.S.C. 5724a, reimbursement is limited to reasonable expenditures necessary to consummation of real estate transactions and applicable regulations preclude reimbursement of costs incident to real estate sale as items of miscellaneous expense.

B-202540 May 11, 1981
COMPENSATION--ADDITIONAL--ENVIRONMENTAL PAY DIFFERENTIAL--
ADMINISTRATIVE DETERMINATION

Wage grade employee claims entitlement to higher rate of environment differential pay asserting that conditions in battery shop where he works as repairer were such as to significantly increase hazard he was exposed to. Authority to determine level of hazard for differential pay purposes is primarily vested in agency concerned. GAO will not substitute its judgment for agency's in absence of clear and convincing evidence that their determination was arbitrary and capricious. Since such evidence was not shown, claim may not be allowed.

B-194020 May 12, 1981
LEAVES OF ABSENCE--SICK--RE-CREDIT OF PRIOR LEAVE--EVIDENCE
TO SUPPORT CLAIM MISSING

Employee of U.S. Army was placed on indefinite sick leave as result of medical examination which found him to be legally blind in one eye. Employee voluntarily applied for disability retirement which was denied by C.S.C. and he was restored to active duty. Employee is not entitled to have recredited sick leave charged to him while application for retirement was pending since there is nothing to indicate that his leave was involuntary or that he was ready, willing and able to work during such period.

B-195373, B-200743 May 12, 1981
COMPENSATION--PROMOTIONS--TEMPORARY--DETAILED EMPLOYEES--
RETROACTIVE APPLICATION

Two employees classified as Machine Operators WG-07, claim that they were detailed to position of Weigher WG-08. Record contains statements from their supervisors that they were detailed to perform duties of Weigher, WG-08, established, classified position. Under these circumstances, employees have met their burden of proof to show that they were detailed and that they are entitled to relief pursuant to our Turner-Caldwell decisions.

B-200256 May 20, 1981

RETIREMENT--CIVILIAN--EFFECTIVE DATE--CHANGES IN SEPARATION DATE

Retirement may be retroactively effected where agency incorrectly advised employee whose position was abolished that he had to meet age and service requirements as of Mar. 31, 1979, rather than Sept. 30, 1979, to qualify for discontinued service retirement. Agency may retroactively change employee's record to show that he was retired on May 6, 1979. Failure of agency to notify employee that he had additional 6 months within which to qualify constituted administrative error which deprived him of right granted by statute and regulation to elect discontinued service retirement.

B-197645 May 21, 1981

COMPENSATION--OVERTIME--ENTITLEMENT--EMPLOYEES RECEIVING PREMIUM PAY

Department of Interior, Bureau of Land Management, is advised that although annual premium pay under 5 U.S.C. 5545(c)(2) for administratively uncontrollable overtime and overtime compensation under 5 U.S.C. 5542(a) for regularly scheduled overtime are mutually exclusive, employee may receive both forms of compensation if criteria for each are met, provided that employee may not receive both forms of compensation for same work.

B-201628 May 21, 1981

COMPENSATION--PREMIUM PAY--STANDBY, etc. TIME

Employee is not entitled to premium pay for standby duty at residence on Govt. reservation. Although he was on call and eligible for overtime for emergency operations after his regular hours of duty, his activities and movements on off-duty hours were not severely restricted and he was not on ready alert. Also, where there is irreconcilable dispute over facts between individual claimant and agency, we are bound to accept agency's statements of facts.

B-200795 May 26, 1981

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

Employee of Dept. of Army is liable for excess costs incurred in transportation of household goods under Govt. Bill of Lading where total weight shipped exceeded statutory maximum of 11,000 pounds, regardless of existence of extenuating circumstances. However in view of uniform tare weights of containers holding household goods, consideration should be given to applying 85 percent rule contained in Federal Travel Regulations, paragraph 2-8.2b(3).

B-201253 May 26, 1981

*DEBT COLLECTIONS--WAIVER--CIVILIAN--COMPENSATION OVERPAYMENTS--
EFFECT OF EMPLOYEE'S FAULT*

Employee was overpaid Temporary Lodging Allowances after he moved into permanent quarters. Since employee failed to inquire when his pay continued to include substantial allowance when he knew that allowance was to terminate, he is not without fault, and under applicable regulations, waiver is precluded. Financial hardship cannot form basis for waiver that may not otherwise be granted.

B-196294 June 1, 1981

*OFFICERS AND EMPLOYEES--REEMPLOYMENT OR REINSTATEMENT--
RIGHTS--AFTER SERVICE WITH INTERNATIONAL ORGANIZATION*

Under 5 U.S.C. 3581 et seq. Fed. employee who transfers to international organization becomes employee of U.S. Govt. Thus, reimbursement of travel, transportation and subsistence expenses, and relocation expenses and allowances for such individuals in connection with their duties for organization are subject to terms and conditions of individual's service agreement with organization. Their entitlements are not to be compared with entitlements of Fed. employees who are transferred overseas by Govt. agency and are subsequently transferred back to U.S. Latter are entitled only to travel and transportation expenses allowed under sub-chapter II of

chapter 57, title 5 U.S.C., in connection with their overseas assignments. B-196294 Aug. 19, 1980, modified in part; B-166678 May 23, 1969, overruled in part.

B-196294 June 1, 1981 - Con.

OFFICERS AND EMPLOYEES--REEMPLOYMENT OR REINSTATEMENT--RIGHTS--AFTER SERVICE WITH INTERNATIONAL ORGANIZATION

Department of Agriculture employee was separated from his position in Phoenix for transfer to international organization Austria under 5 U.S.C. 3581 et seq. Incident to his reemployment with Department of Agriculture at Phoenix, he was immediately transferred to Fresno. Employee's entitlements to change of station benefits in connection with his transfer from Phoenix to Fresno are controlled by provisions of 5 U.S.C. 5721, et seq. and implementing regulations applicable to employees transferred between duty stations in U.S. and are not subject to those provisions of 5 U.S.C. 5721 et seq. which are applicable to Government employees transferred by a Federal agency to or from overseas posts of duty. B-196294 Aug. 19, 1980, modified in part; B-166678 May 23, 1969, overruled in part.

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--HOUSE SALE--ACTUAL RESIDENCE AT TIME OF OFFICIAL TRANSFER REQUIREMENT--EXCEPTION

Department of Agriculture employee was separated from his position in Phoenix for transfer to international organization in Austria under 5 U.S.C. 3581 et seq. Incident to his reemployment with the Department of Agriculture, he was transferred from Phoenix to Fresno. Employee may be reimbursed for expenses incurred in sale of residence in Phoenix incident to transfer to Fresno. Employee would have occupied house at Phoenix but for service overseas with international organization, and it was sold after employee had been definitely informed of transfer. B-196294, August 19, 1980, modified in part. B-166678, May 23, 1969, will no longer be followed as to residence sales expenses.

B-201945 June 4, 1981

CLAIMS--EVIDENCE TO SUPPORT--CLAIMANT'S RESPONSIBILITY

Employee appeals action of Claims Group which denied claim for retroactive promotion and backpay based on detail to Assistant Personnel Officer position on grounds she did not perform all duties of position. In support of appeal employee supplied former supervisor's statement indicating that she performed all duties of higher grade position. Since statement is inconsistent with same supervisor's previous statement given in course of agency hearing, claimant has not sustained burden of showing that she performed all duties of the position.

B-198336 June 9, 1981

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

In computing employee's cost for excess weight of household goods, Government's share of cost may not be based on higher rate for 11,000 pounds maximum rather than lower rate for billed weight of 16,000 pounds. Further, offset for not incurring unpacking charges may not be deducted from employee's cost for excess weight. Fed. Trav. Regs. prescribe procedure for determining charges payable by employee for excess weight. These regulations have force and effect of law and may not be modified by employing agency or G.A.O. regardless of existence of any extenuating circumstances. Computation must be based on total charges multiplied by ratio of excess weight to total weight of shipment (15,900 pounds).

B-201301 June 9, 1981

CLAIMS--EVIDENCE TO SUPPORT--ADMINISTRATIVE RECORDS CONTRARY TO ALLEGATIONS--DOUBTS RESOLVED IN FAVOR OF GOVERNMENT

Employee states she was not aware of rental car arrangements. Agency states such fact was communicated to her. This Office operates on basis of written record and where record contains dispute of fact which cannot be resolved without adversary hearing, such dispute is resolved in favor of Govt.

B-201301 June 9, 1981 - Con.

VEHICLES--RENTAL--APPROVAL OR AUTHORIZATION REQUIREMENT

Employee on temporary duty assignment is not entitled to difference between higher cost of car she rented and lower cost of rental vehicle designated by authorized travel official. Cost of commercial rental vehicle or other special conveyance is reimbursable only if authorized or approved as advantageous to Govt. and authorized official made such determination in this case pursuant to para. 1-3.2a of Federal Travel Regs.

B-201812 June 9, 1981

*OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
TEMPORARY QUARTERS--ABSENCES*

In absence of administrative authorization or approval of use of temporary quarters employee may not be reimbursed temporary quarters subsistence expenses.

B-198576 June 10, 1981

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

Employee claims that mistake was made in weighing his household goods because number for one of four van containers listed on weight certificate differed from one van container listed on Government Bill of Lading. In these circumstances employee has met burden of proof and shown that error was made in weighing part of his shipment. To correct this error, constructive weight of misweighed portion of shipment should be computed and substituted for incorrect actual weight.

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

Employee may not be relieved of liability for cost of shipping weight allowance even if his request for a reweigh was not honored. Regulations which provide for reweigh at employee's request are procedural or instructional and do not provide basis for relieving employee from excess weight charges when weight was properly established at origin by weight certificates.

B-201321 June 10, 1981
SUBSISTENCE--PER DIEM--RATES--INCREASES--EFFECTIVE DATE

Agency questions whether rate for temporary quarters reimbursement increased when statute raised maximum per diem rates or when regulations raised per diem rates for temporary duty travel. Since rates for temporary quarters reimbursement are pegged on statutory maximum per diem rates, increase is effective on date statute is amended.

B-200615 June 15, 1981
OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--HOUSE PURCHASE--LOAN ORIGINATION FEE

Transferred employee may not be reimbursed for expense he characterizes as "VA loan origination fee" incurred incident to purchase of home in vicinity of new duty station. Fee has been held by this Office to be finance charge and, thus, nonreimbursable expense under Federal Travel Regs. (FPMR 101-7) para. 2-6.2d (May 1973). That I.R.S. may not permit fee to be deducted as interest is not relevant. 5 U.S.C. 5724 and 5724a govern employee's entitlement to reimbursement for relocation expenses, not laws and regulations governing taxation.

B-199432 June 16, 1981
SUBSISTENCE--PER DIEM--TEMPORARY DUTY--RETURN DELAYED--REST STOPOVER

Employee worked on last day of temporary duty until 3:45 p.m. and delayed return to headquarters until following morning by privately owned vehicle authorized for his convenience. Constructive per diem and travel time by commercial air may cover overnight layover. Delayed flight would have been reasonable, since last workday was relatively long and flight would not have arrived at headquarters until 9:34 p.m., well beyond normal duty hours. Also, employee's presence at work was not required first thing following morning. Per diem and travel time for leave purposes are limited to that for constructive air travel.

B-201946 June 16, 1981

*OFFICERS AND EMPLOYEES--PROMOTIONS--TEMPORARY--DETAILED
EMPLOYEES*

VA Food Service worker, WG-3, whose position description provided for substituting for WG-4's, during their absences, seeks backpay under Turner-Caldwell, claiming detail to the WG-4 position for 528 days over 4-1/2 years - initially 2 days a week regularly and more during extended absences of WG-4's and full time last 115 days. Claim was timely Filed with VA but part was over 6 years old when received in GAO. This part must be disallowed even if delay was fault of VA since 31 U.S.C. 71a bars without exception all claims not received in GAO within 6 years. Remainder of claim must also be disallowed in absence of evidence of any single period of detail exceeding 120-day limitation on VA's detail authority or of VA's intent to circumvent this limitation.

B-199594 June 17, 1981

*OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
TRANSPORTATION FOR HOUSE HUNTING--TIME LIMITATION*

Employee's and wife's house-hunting trip planned to be completed within 6 days was extended to 7-1/2 days by circumstances beyond their control. Per diem may not be allowed for more than 6 days. FTR para. 2-4.2 prohibits payment of expenses by Govt. for more than 6 days, including travel time. Regulation is not arbitrary capricious or contrary to law and no basis can be found to justify payment of additional 1-1/2 days expenses.

B-201776 June 17, 1981

*COMPENSATION--PROMOTIONS--RETROACTIVE--ADMINISTRATIVE ERROR--
LACKING*

Former Veterans Administration employee claims retroactive promotion with backpay alleging wrongful denial of promotion based on agency failure to follow nondiscretionary regulations and policies. Claim for retroactive promotion is denied since granting of promotion is discretionary matter primarily within province of admini-

strative agency involved and record fails to show existence of nondiscretionary agency policy or regulation which would require that he be promoted. Also, there was no final approval of action to establish and classify position at higher grade. Even if position was erroneously classified, any remedy would have been prospective only upon formal classification appeal.

B-202440 June 17, 1981

OFFICERS AND EMPLOYEES--DE FACTO--SERVICE IN EXCESS OF TIME LIMITATION

Employee of Office of the Federal Cochairman, Four Corners Regional Commission, who worked beyond her temporary appointment limitation due to administrative error, may be compensated for services performed in good faith.

B-197134 June 18, 1981

SUBSISTENCE--PER DIEM--REDUCTION--LATE NOTIFICATION OF CHANGE--OVERPAYMENT

Six civilian employees of Pearl Harbor Naval Shipyard received per diem at the higher rate in effect prior to August 1, 1976, during various dates between May 28, 1977, and January 29, 1980. Change in JTR, effective August 1, 1976, reduced per diem to 55 percent for extended training. No basis exists for allowing higher per diem for training performed after effective date of lower rate. However, since overpayments resulted from administrative failure to implement regulatory change in per diem rate over extended period of time, rate reduction was so substantial, and employees acted in good faith, equities warrant reporting claims to Congress under Meritorious Claims Act, 31 U.S.C. 236.

B-200450 June 18, 1981

DEBT COLLECTIONS--WAIVER--CIVILIAN EMPLOYEES--ALLOWANCES

Employee received erroneous payment of post allowance through administrative error which was reflected on his biweekly earnings and leave statements. Debt may not be waived since he knew or should have known from substantial increase in pay and from examination of his

earnings and leave statement that error 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 accounting error is corrected.

B-198040 June 19, 1981

AGENCY FOR INTERNATIONAL DEVELOPMENT--CONTRACTS--PERSONAL SERVICES--RETIREMENT "ALLOWANCE"--SALARY v. ALLOWANCE--TAX CONSEQUENCES

Retirement allowance received by A.I.D. personal services contractor is considered part of contractor's salary although it is designated in contract as "allowance" and contractor has requested that it be paid into individual retirement account in a financial institution. Tax (FICA and income) consequences of such payment is matter for Internal Revenue Service.

AGENCY FOR INTERNATIONAL DEVELOPMENT--CONTRACTS--PERSONAL SERVICES--RETIREMENT "ALLOWANCE"--TWO-SYSTEM COVERAGE--AGENCY AUTHORITY

A.I.D. contracting officer has not exceeded his authority by negotiating clause in personal services contractor's agreement for payment of retirement allowance equivalent to that paid for agency direct hire although such clause may contravene agency policy since agency is also contributing to Social Security on behalf of contractor; that is, contributing to two retirement systems on contractor's behalf.

B-191696 June 22, 1981

CLAIMS--REPORTING TO CONGRESS--MERITORIOUS CLAIMS ACT

The claims of 14 civilian employees of the Navy Public Works Center, Norfolk, Virginia, for reimbursement of expenses incurred while on extended temporary duty to Thurso, Scotland, caused by reduction in rate of per diem, are not unusual in nature and are likely to constitute a recurring problem. Such claims do not present such elements of legal liability or equity so as to justify reporting the claims to the Congress under the Meritorious Claims Act, 31 U.S.C. 236.

B-191696 June 22, 1981 - Con.

SUBSISTENCE--PER DIEM--REDUCTION--LATE NOTIFICATION OF CHANGE--OVERPAYMENT

Fourteen civilian employees of Navy Public Works Center, Norfolk, Virginia, received per diem while on extended temporary duty in Thurso, Scotland, during various dates between July 18 and December 15, 1977, at a rate of \$49 per day. Change in Standardized Regulations (Government Civilians, Foreign areas) issued by Department of State, reduced per diem to \$34 per day for various locations in Scotland, effective August 1, 1977. No legal basis exists for allowance of higher rate of per diem for temporary duty performed after effective date of lower rate.

B-195029 June 22, 1981

DETAILS--COMPENSATION--HIGHER GRADE DUTIES ASSIGNMENT--UNCLASSIFIED POSITION

Employee's claim for retroactive promotion and backpay for overlong detail under Turner Caldwell line of cases was denied by Claims Group on basis that position to which employee was detailed was never established. On appeal employee disputes agency's contention that subject position was never properly established and classified. Disallowance is sustained since employee has not submitted evidence sufficient to controvert agency's position and therefore has not satisfied his burden of proof.

B-198062 June 23, 1981

SUBSISTENCE--PER DIEM--RATES--EN ROUTE--OUTSIDE UNITED STATES--RETROACTIVE APPROVAL OF HIGHER RATE

Civilian employee of Air Force traveled by company owned aircraft round trip between Fort Worth, Texas, and Brussels, Belgium, and paid for his meals on the aircraft. Employee was authorized reimbursement for all necessary travel expenses and he was reimbursed at per diem rate of \$6 pursuant to regulations although he paid a substantially higher amount for meals. 2 Joint Travel Regulations para. C4552-3b(9) permits appropriate official to authorize or approve increased

per diem rate for en route travel outside continental United States. Since no administrative action had been taken to increase per diem rate pursuant to this regulation prior to employee's travel, appropriate official of Air Force may approve higher per diem rate. B-187921, Nov. 18, 1977, overruled in part.

B-197816 June 24, 1981

*OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
TRANSPORTATION FOR HOUSE HUNTING--TRANSFER ACCEPTANCE
REQUIREMENT*

Employee declined transfer after house-hunting trip, contending wife couldn't tolerate climate of new duty station because of allergies. If reason for declination was in fact beyond employee's control and acceptable to agency, GAO will not object to agency's payment of expenses of house-hunting trip. However, whether or not reason meets this test is primarily for determination by agency and GAO will not disturb agency's decision unless clearly erroneous, arbitrary or capricious.

B-197886 June 24, 1981

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

Former employee of HEW was erroneously paid for 80 instead of 8 hours on final salary check and advised by agency officials to retain check. When she later received her lump-sum leave payment in a much smaller amount than she anticipated, she assumed overpayment had been deducted. Agency failed to respond to her telephone inquiries and did not give her a leave and earnings statement for the leave check until 14 months later. We find she was justified in her assumption and in paying her income taxes on that basis. Accordingly, employee was not at fault and collection would be against equity and good conscience. Waiver of the overpayment is granted.

B-200852 June 24, 1981

*COMPENSATION--DOWNGRADING--SAVED COMPENSATION--SUBSEQUENT
DOWNGRADING ACTIONS*

Two-year save pay period provided in Subchapter S9 of Federal Personnel Manual Supplement 532-1 for downgrading from General Schedule position to wage schedule position incident to Reduction in Force is not terminated by subsequent downgrading from the wage schedule position to General Schedule position. However, portion of claim that accrued more than 6 years before claim was filed in GAO is barred by 31 U.S.C. 71a, and GAO has no authority to waive or modify its provisions.

B-201767 June 24, 1981

*DETAILS--EXTENSIONS--OFFICE OF PERSONNEL MANAGEMENT APPROVAL--
DELEGATION OF AUTHORITY*

Employee who was detailed to higher grade position on September 29, 1978, is entitled to retroactive temporary promotion and backpay beginning 121st day after detail. FPM Bulletin 300-48, effective February 15, 1979, delegated authority to agencies to detail employees to higher-grade positions for 240 days without prior approval of the Office of Personnel Management. Employee is entitled to backpay up to effective date of Bulletin. On and after effective date entitlement to backpay is governed by Bulletin's provisions.

B-197605 June 25, 1981

*APPROPRIATIONS--AVAILABILITY--MAID SERVICE--MILITARY PERSONNEL
IN PROTECTIVE CUSTODY--WITNESSES FOR MILITARY INVESTIGATION*

In order to ensure orderly investigation into alleged illegal activities on base, Air Force base commander ordered witnesses to stay in transient quarters under protective custody. While in transient quarters, members received maid service for service charge of \$4 a day. In view of purpose of assignment to transient quarters, service charges may be paid out of appropriated funds.

B-201043 June 26, 1981

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

Employee of Federal Aviation Authority who found it necessary to store household goods in excess of 60 days due to temporary duty assignment made soon after permanent change of station may not be reimbursed for temporary storage charges in excess of 60 days. Reimbursement of costs of storage beyond 60-day temporary period is not authorized regardless of extenuating circumstances.

B-199913 June 30, 1981

*OFFICERS AND EMPLOYEES--SEPARATION ACTION CHANGES--MENTAL
INCAPACITY AT TIME OF RESIGNATION*

Where agency accepted employee's resignation but employee was so mentally ill at time of resignation that he was incapable of making rational decision, resignation would be for cancellation under the rule in 39 Comp. Gen. 89. In this case, any claim resulting from such action is barred under 31 U.S.C. 71a. However, entitlement to disability retirement annuity is within the jurisdiction of the Office of Personnel Management not GAO, and his claim for such annuity should be presented to that office.

B-201732 June 30, 1981

*OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES
VOLUNTARY TRANSFER--MERIT PROMOTION PROGRAM*

Former employee of Small Business Administration, Washington, D.C., who was selected under merit promotion program for transfer to higher grade position with General Services Administration, Region 3, Philadelphia, Pennsylvania, is entitled to relocation expenses under 5 U.S.C. 5724a. Absent agency policy to contrary, merit promotion transfers are considered to be in Government's interest and relocation expenses are payable even though agency failed to issue travel orders at time of selection.

B-202734 June 30, 1981

MERIT SYSTEMS PROTECTION BOARD--MEMBERS--CIVIL SERVICE COMMISSIONERS UNDER PRIOR LAW--SERVING OUT TERMS OF FORMER OFFICE; REPLACEMENT PRIOR TO EXPIRATION OF TERM; etc.-- CIVIL SERVICE REFORM ACT OF 1978 PROVISIONS

On January 1, 1979, Civil Service Commission was redesignated the Merit Systems Protection Board, and Commissioners became Board members, pursuant to Civil Service Reform Act of 1978. Under transitional legislation, those Board members serve out terms of office they would have had as Commissioners and may hold over in office thereafter until new 7-year full-term appointments to Board are made under newly enacted law (5 U.S.C. 1202). If former Commissioner resigns, his replacement serves remainder of his term under same conditions and with same eligibility to hold over in office. Subsec. 202(b), Pub. L. 95-454.

MERIT SYSTEMS PROTECTION BOARD--MEMBERS--HOLDING OVER BEYOND EXPIRATION OF TERM--APPOINTEES--FULL-TERM

New full-term appointments to Merit Systems Protection Board are governed by 5 U.S.C. 1202, as added by Civil Service Reform Act of 1978. Under that statute, Board members appointed to full 7-year term are ineligible for reappointment but may hold over in office for up to 1 year after end of their terms; however, Board members appointed to fill vacancy in office and serve out the remainder of a 7-year term may be reappointed to another term but are not specifically authorized to hold over in office. These individuals should not hold over unless the law is changed to authorize specifically.

INDEX

April through June 1981

		<u>Page</u>
AGENCY FOR INTERNATIONAL DEVELOPMENT		
Contracts		
Personal services		
Retirement "allowance"		
Salary <u>v.</u> allowance--		
tax consequences	B-198040	June 19.... 28
Two-system coverage--		
agency authority	B-198040	June 19.... 28
APPROPRIATIONS		
Availability		
Maid service		
Military personnel in		
protective custody		
Witnesses for military		
investigation	B-197605	June 25.... 31
CLAIMS		
Evidence to support		
Administrative records contrary		
to allegations		
Doubts resolved in favor of		
Government	B-201301	June 9.... 23
Burden of proof		
Claimant's responsibility	B-200403	Apr. 27.... 12
Claimant's responsibility	B-201945	June 4.... 23
Reporting to Congress		
Meritorious Claims Act	B-191696	June 22.... 28
CLASSIFICATION		
Reclassification		
Effective date		
Retroactive	B-198473	May 4.... 14

INDEX

Page

COMPENSATION

Additional

Environmental pay differential

Administrative

determination

B-202540

May

11... 19

Downgrading

Saved compensation

Effect of Civil Service Reform

Act of 1978

B-199461

Apr.

15.... 5

Subsequent downgrading

actions

B-200852

June

24... 31

*Missing, interned, captured,
etc., employees*

Overtime

Entitlement

B-200639

Apr.

15... 5

Overtime

Entitlement

Employees receiving

premium pay

B-197645

May

21... 20

Inspectional Service

employees

Part time WAE employees

B-197533

Apr.

3... 1

Standby, etc. time

Duty officers

B-201436

Apr.

16... 8

Premium pay

Standby, etc. time

B-201628

May

21... 20

Promotions

Retroactive

Administrative error

Lacking

B-201776

June

17... 26

Rule

B-199843

Apr.

29... 13

INDEX

Page

COMPENSATION - Con.

Promotions - Con.

Temporary

Detailed employees

Retroactive
application

B-195373

B-200743

B-197631

May 12... 19

Apr. 23... 10

Retroactive

B-200403

B-201080

Apr. 27... 12

May 6... 17

Rule

B-200669

May 6... 17

Whitten Rider
restriction

B-191386

Apr. 6... 2

Removals, suspensions etc.

Back pay

Entitlement

Unjustified or unwarranted
removal requirement

B-197981

May 8... 17

DEBT COLLECTIONS

Waiver

Civilian employees

Allowances

B-200450

June 18... 27

Compensation overpayments

Appointment to erroneous
step in grade

B-198760

Apr. 27... 12

Collection against equity
and good conscience

B-197886

June 24... 30

Effect of employee's
fault

B-201253

May 26... 21

Periodic step-
increases

B-201862

Apr. 30... 14

Effect of employee's
fault

B-200295

Apr. 28... 13

INDEX

Page

DETAILS

Compensation

Higher grade duties assignment

Evidence to support

Sufficiency

B-191386

Apr. 6... 3

B-199250

Apr. 15... 4

Unclassified position

B-195029

June 22... 29

Extensions

Office of Personnel

Management approval

Delegation of authority

B-201767

June 24... 31

FRAUD

False claims

Fraudulent items as vitiating

entire voucher

B-200838

Apr. 21... 8

INTERGOVERNMENTAL PERSONNEL

ACT

Assignment of Federal employees

Miscellaneous expense allowance

Not applicable

B-198939

Apr. 3... 2

LEAVES OF ABSENCE

Court

Entitlement

Complaints under Civil Rights

Act

Discrimination alleged

B-201602

Apr. 1... 1

Sick

Advances

Administrative

determination

B-199114

Apr. 28... 13

Recredit of prior leave

Evidence to support

claim missing

B-194020

May 12... 1

MERIT SYSTEMS PROTECTION
BOARD

Members

*Civil Service Commissioners
under prior law*

*Serving out terms of former
office; replacement prior to
expiration of term; etc.*

*Civil Service Reform Act of
1978 provisions* B-202734 June 30... 33

*Holding over beyond expiration
of term*

Appointees

Full-term B-202734 June 30... 33

OFFICERS AND EMPLOYEES

De facto

*Service in excess of time
limitation*

B-202440 June 17... 27

Promotions

Temporary

Detailed employees B-201946 June 16... 26

Reemployment or reinstatement

Rights

*After service with international
organization*

B-196294 June 1... 21

Separation action changes

*Mental incapacity at time
of resignation*

B-199913 June 30... 32

Transfers

Relocation expenses

House purchase

Loan origination fee B-200615 June 15... 25

Finance charge

B-194794 May 5... 15

Recording fees

B-199193 Apr. 22... 9

INDEX

Page

OFFICERS AND EMPLOYEES - Con.

Transfers - Con.

Relocation expenses - Con.

House sale

Actual residence at time of
official transfer requirement

Exception B-196294 June 1... 22

Escrow fee B-201009 Apr. 16... 7

Pro rata expense
reimbursement B-199193 Apr. 22... 10
B-200173 Apr. 9... 4

Taxes

Federal income tax
credit B-202392 May 11... 18

Service fees B-199944 Apr. 16... 6

Absences B-201812 June 9... 24

Family did not join
employee B-198939 Apr. 3... 2

Temporary quarters

Leased quarters prior to
house purchase B-201861 Apr. 1... 1

Permanent dwelling
occupancy B-199958 Apr. 22... 10

Vacating residence
requirement B-199525 May 6... 16

Transportation for house
hunting

Time limitation B-199594 June 17... 26

Transfer acceptance
requirement B-197816 June 24... 30

INDEX

Page

OFFICERS AND EMPLOYEES - Con.

Transfers - Con.

Relocation expenses - Con.

Voluntary transfer

Merit promotion
program

B-201732

June 30.... 32

PROPERTY

Private

Damage, loss, etc.

Carrier's liability

Generally

B-197670

Apr. 16.... 5

RETIREMENT

Civilian

Effective date

Changes in separation
date

B-200256

May 20.... 20

STATUTES OF LIMITATION

Claims

Date of accrual

B-201936

Apr. 21.... 8

Compensation payments

Back pay

B-201936

Apr. 21.... 9

General Accounting Office

Effect of time limitation

Claim barred

B-197631

Apr. 23.... 11

STORAGE

Household effects

Temporary storage

Time limitation

Exceeded

B-201043

June 26.... 32

SUBSISTENCE

Necessary expenses of subsistence

requirement

B-198775

Apr. 16.... 6

SUBSISTENCE - Con.

Per diem

Actual expenses

Itemization of actual food
expenses

Reasonable B-198775 Apr. 16... 6

"Lodgings-plus" basis

Staying with friends,
relative, etc.

B-200079 Apr. 3... 2

Rates

En route

Outside United States

Retroactive approval of
higher rate

B-198062 June 23... 29

Increases

Effective date

B-201321 June 10... 25

Lodging costs

B-200305 Apr. 23... 11

Apartment rental

Dependents with
employee

B-199525 May 6... 16

Reduction

Effective date

B-198399 Apr. 6... 3

B-198930 Apr. 6... 3

Reduction

Late notification of change

Overpayment

B-191696 June 22... 29

E-197134 June 18... 27

Temporary duty

New employee prior to reporting

to first duty station

B-193401 May 5... 15

Return delayed

Rest stopover

B-199432 June 16... 25

INDEX

Page

TRANSPORTATION

Automobiles

Land transportation B-201009 Apr. 16... 7

Dependents

Transfers

Dependents traveled from
vacation point B-199525 May 6... 16

Household effects

Commutation

Actual expenses v. commuted
rate
Administrative
determination B-200479 Apr. 16... 7

Insurance

Liability for excess
valuation B-197670 Apr. 16... 6

Weight limitation

Evidence

Sufficiency B-198576 June 10... 24

Excess cost

liability B-198336 June 9... 23
 B-198576 June 10... 24
 B-200795 May 26... 21

TRAVEL EXPENSES

Actual expenses

Reimbursement basis

Lodging

Official business conducted
in room B-200040 May 6... 16

Air travel

Fly America Act

Employee's liability

Travel by noncertificated
air carriers B-192522 Apr. 22... 9

INDEX

Page

TRAVEL EXPENSES - Con.

Constructive travel costs
Computation

B-200305 Apr. 23... 11

Overseas employees
Renewal agreement
travel

B-201256 Apr. 27... 12

Transfers

Government v. employee
interest
Authorization
requirement

B-198937 Apr. 15... 4

UNIONS

Federal service
Dues

Allotment for
Agency failure to discontinue
Recoupment of
payments

B-195406 May 11... 18

VEHICLES

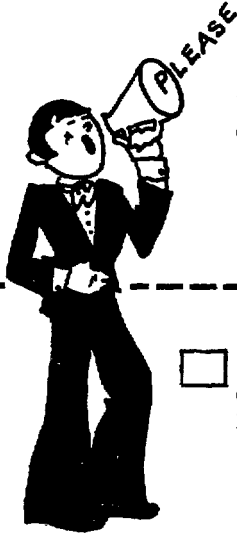
Rental

Approval or authorization
requirement

B-201301 June 9... 24

x

MAILING LIST INQUIRY



.....HELP US KEEP A CURRENT MAILING LIST. YOUR NAME ON OUR LISTING IS AS SHOWN ON THE REVERSE OF THIS FORM. IF APPLICABLE, CHECK THE APPROPRIATE BLOCK, PROVIDING US WITH THE INFORMATION REQUESTED BELOW.

LISTING IS INCORRECT. PLEASE CHANGE TO:
(STATE NAME AND COMPLETE ADDRESS, INCLUDING ZIP CODE.)

REMOVE THE FOLLOWING NAME(S) FROM YOUR MAILING LIST FOR THE PUBLICATION(S) IDENTIFIED:

NAME

PUBLICATION



THANK YOU FOR RETURNING THE COMPLETED FORM TO:

U.S. GENERAL ACCOUNTING OFFICE
OFFICE OF ADMINISTRATIVE SERVICES
DISTRIBUTION SECTION, ROOM 4522
441 G STREET, NW.
WASHINGTON, D.C. 20548

Note: GAO staff members should indicate changes in their mailing addresses by submitting a new GAO form 410.

AN EQUAL OPPORTUNITY EMPLOYER
U. S. GENERAL ACCOUNTING OFFICE
WASHINGTON, D. C. 20548

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE, \$300



POSTAGE AND FEES PAID
GENERAL ACCOUNTING OFFICE

THIRD CLASS