



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

40187

B-171969

November 14, 1973

Mr. John Gordon Underwood
Administrative Law Judge
Bureau of Hearings and Appeals
Social Security Administration
1325 G Street, N. W.
Washington, D. C. 20005

Dear Mr. Underwood:

Reference is made to your letter of March 16, 1973, to the Regional Representative, Bureau of Hearings and Appeals (BHA), Social Security Administration, with related correspondence, which was received in our Office September 10, 1973. The correspondence concerns your claim for mileage and per diem incident to your attendance at the administrative law judge's orientation and training course in Arlington, Virginia, for the period August 28, 1972, through October 13, 1972. Your claim was denied administratively and you apparently request our review.

The letter indicated that prior to acceptance of the appointment as an Administrative Law Judge, you injured your back and were cautioned by a neurosurgeon to avoid driving for several months in order to allow it to heal. In view of the above warning, the status of your physical condition was conveyed to Mr. Swain (BHA), who requested and received tentative approval from the Philadelphia Regional Office for you to stay in Arlington Monday through Thursday night to avoid the 120 mile round trip each day from your home in Severna Park, Maryland, to Arlington. Your letter further indicated that on the basis of that approval, you resided in Arlington during the week, and as a result thereof, incurred lodging, meal and miscellaneous expenses for which you seek reimbursement. Your travel voucher was administratively disapproved because your travel order did not authorize per diem. Upon administrative review the disallowance was sustained on the ground that you could have made less costly arrangements for your attendance at the course.

With respect to your claim for per diem, there is no requirement of law that such allowance be authorized upon assignment to a temporary duty station. B-168637, July 15, 1970. The determination as to the allowance of per diem is within the discretionary authority of the administrative agency concerned. B-156699, May 24, 1965.

718481

091777

B-171969

With regard to whether a per diem allowance will be authorized in connection with a particular temporary duty assignment, section 6.3 of the Standardized Government Travel Regulations (SGTR), in effect at the time the temporary duty was performed, provided as follows:

"a. General. It is the responsibility of each department and agency to authorize only such per diem allowances as are justified by the circumstances affecting the travel * * *."

The Social Security Administration Administrative Directives System Guide 240-80 IVB 2b provides the following additional guidance:

"No overnight per diem is allowable when the traveler's duty station or residence is within 30 miles of the temporary duty point."

Therefore, in view of the fact that your duty station (Washington, D. C.) at the time the temporary duty was performed and your temporary duty point (Arlington, Virginia) for the training and orientation session, were within 30 miles of each other, you were not entitled to per diem expenses. Further, since the SGTR specifically provided that a per diem allowance may be authorized or approved by the proper administrative officials and the authorization for such per diem being within their discretion, it is not within the jurisdiction of our Office to question the propriety of their refusal to authorize such expenses to you regardless of the reason therefor. B-168637, July 15, 1970; B-156699, May 24, 1965.

With respect to the tentative approval given to you by the Philadelphia Regional Office, upon which you relied and incurred the aforementioned expenses, we have consistently held that the receipt by one dealing with a Government official of erroneous information does not afford a legal basis for payment of the claim. B-176040, June 30, 1973. The United States has power to act only through its agents whose authority, and the manner of exercise thereof, is prescribed and limited by statute, regulation and administrative and judicial determination. 46 Comp. Gen. 348 (1966). In the absence of specific authority therefor, the United States is not liable for the negligent or erroneous acts of its officers, agents or employees, even though committed in the performance of their official duties. 44 Comp. Gen. 337,

11-171969

339 (1964). To make the Government liable for such unauthorized acts, would, in effect, permit agents of the Government to obligate the United States in direct contravention of those limitations and prescriptions and nullify the basic purposes of the statutes, regulations and determinations. 46 Comp. Gen. 348, supra. While it is regrettable that you may have been misled by the erroneous information, your rights are for determination only on the basis of the facts and the applicable statute and regulations rather than on such erroneous information. Consequently, and notwithstanding any information to the contrary, reimbursement of claimed expenses incident to training assignment, may not be allowed when reimbursement therefor was specifically prohibited in the regulations applicable at the time the travel was performed.

In view of the foregoing, there is no basis on which we may allow your claim.

Sincerely yours,

H. P. Keller

Deputy

Comptroller General
of the United States