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UNITED STATES GENERAL ACCOUNTING OFFICE

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July through September 1981

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DECISIONS OVERRULED OR MODIFIED

The following cases are no longer for application
(see B-204071, July 29, 1981):

- 16 Comp. Gen. 121
- 32 Comp. Gen. 89
- 45 Comp. Gen. 333

July through September 1981

B-202104 July 2, 1981

MEALS--FURNISHING--GENERAL RULE

Secret Service agents who are required to purchase meals at high cost hotels or other facilities at their headquarters as a result of 24-hour-a-day protective duty assignments may not be paid daily allowance to compensate for added costs they incur, since such allowance is prohibited by 5 U.S.C. 5536; further, such assignments do not normally involve extreme emergencies involving danger to human life so as to permit Government to furnish agents' meals from appropriated funds under rule in 53 Comp. Gen. 71 (1973).

B-195597 July 6, 1981

*COMPENSATION--REMOVALS, SUSPENSIONS, etc.--BACKPAY--
INVOLUNTARY LEAVE--PENDING APPROVAL OF AGENCY DISABILITY
RETIREMENT APPLICATION*

Agency placed employee on involuntary leave and leave without pay pending CSC's action on agency-filed application for disability retirement. Employee claims restoration of leave and backpay since Commission denied retirement application. Agency's placing employee on involuntary annual leave and leave without pay was not an unjustified or unwarranted personnel action where the agency's action was based on results of psychiatric evaluation. Record as a whole shows no reason why agency should not have relied on such competent medical evidence.

B-200167 July 7, 1981

*OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
HOUSE SALE--BROKER'S FEE--FINDER'S FEE IN LIEU OF*

Employee transferred between duty stations in California requests reimbursement of finder's fee in lieu of real estate commission. Record shows that services

performed for employee were not those of "finder" as defined by California law but were those of caretaker. Since FTR para. 2-6.2d precludes reimbursement for maintenance expenses, claim is denied.

B-200640 July 7, 1981

TRAVEL EXPENSES--ILLNESS--CAR RENTAL AS MEDICAL EXPENSE--NON-REIMBURSABLE

Civilian marine employee of Military Sealift Command on temporary duty while convalescing from heart attack rents automobile on recommendation of attending physician. Since hired automobile was not used for official business but was necessary medical expense, claim for reimbursement for rental and related expenses may not be allowed as travel or temporary duty expense. Further, no authority has been found for the Govt. to pay for car rental as medical expense even though seamen such as claimant are entitled to medical benefits from the PHS under 42 U.S.C. 249.

B-201281 July 7, 1981

TRAVEL EXPENSES--VEHICLES--USE OF PRIVATELY OWNED--COMMON CARRIER COMPARATIVE COST

Defense Logistics Agency employee who was driven on two round trips (each trip over 200 miles) by privately owned vehicle to and from airport primarily for personal convenience when travel by common carrier was reasonably available may not be reimbursed for difference in mileage allowance and one round-trip bus fare between same points.

B-201431 July 7, 1981

INTERGOVERNMENTAL PERSONNEL ACT--PER DIEM--LEAVE AND NONWORKDAYS

Employee of state institution of higher education was detailed to executive agency and authorized per diem during term of Intergovernmental Personnel Act term of Intergovernmental Personnel Act assignment under 5 U.S.C. 3375(a)(1)(B) (1976). However, per diem payments in these circumstances must be made in ac-

cordance with subchapter I of chapter 57, title 5, United States Code, and implementing rules contained in Federal Travel Regulations (FTR). Under paragraph 1-7.5 of FTR, employee is not entitled to per diem for period of 12 days during which he was in leave status. The regulation is controlling notwithstanding erroneous advice by agency officials.

B-203008 July 7, 1981

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

Grade GS-4 employee claims to have performed duty subsequently performed by incumbent of GS-7 position. Retroactive promotion and backpay for detail to higher grade position may not be allowed even though agency does not dispute that employee performed duties in question because employee has not submitted evidence to show that she was assigned to and did, in fact, perform full range of duties of higher grade position.

B-203283 July 7, 1981

*COMPENSATION--REMOVALS, SUSPENSIONS, etc.--BACKPAY--
ENTITLEMENT--UNJUSTIFIED OR UNWARRANTED REMOVAL REQUIREMENT*

FAA employee was terminated and subsequently reinstated. Employee's claim for backpay during period she was unemployed is disallowed since there has been no finding by an appropriate authority that termination action was unjustified or unwarranted. 5 U.S.C. 5596 (1976).

B-192050 July 13, 1981

*COMPENSATION--WITHHOLDING--UNION DUES--ERRONEOUS DEDUCTIONS--
REFUND*

Employee requests refund of \$346.50 in union dues which were erroneously deducted from his pay, instead of pay of employee with similar name, between 1969 and 1977. Employee may be reimbursed for those deductions the refund of which is not barred by Statute of Limitations. Repayment by union may be waived, in whole or in part, under 5 U.S.C. 5584, if, after reviewing record, Department of Air Force determines that waiver is appropriate.

B-199656 July 15, 1981

GIFTS--TO OFFICERS AND EMPLOYEES--ACQUISITION UNRELATED TO
OFFICIAL DUTIES

Fed. employee is entitled to keep prizes and gifts acquired from private sources through means that are unrelated to his official duties; hence, if employee while traveling on official business happens to enter contest sponsored by air carrier which is open to entire general public rather than to just ticket-holding passengers, then transaction may properly be regarded as employee's own personal affair, and in that particular situation he would not have duty to account for any prizes won.

GIFTS--TO OFFICERS AND EMPLOYEES--AIR TRAVELERS--DISCOUNT
COUPONS, etc.

It is a fundamental rule of law that Fed. employee is obligated to account for any gift, gratuity, or benefit received from private sources incident to performance of official duty, and therefore employee may not retain any "half-fare coupon," "bonus point," or similar item of value received from commercial air carrier on basis of purchase of airline ticket to be used for official travel.

B-201508 July 15, 1981

SUBSISTENCE--PER DIEM--ADMINISTRATIVE DETERMINATION TO
PROVIDE--DISCRETIONARY

Employee claims additional per diem on basis that reduced per diem rate established by his agency for employees on temporary duty was not sufficient to cover all of his subsistence expenses. His claim may not be allowed because decision as to whether or not to authorize per diem and as to the amount of per diem is within discretionary authority of employing agency.

B-202274 July 15, 1981
*RETIREMENT--CIVILIAN--INVOLUNTARY RETIREMENT, etc.--
DISCONTINUED SERVICE RETIREMENT*

Agency abolished employee's position effective December 7, 1979, while he was on extended sick leave and detailed him to nonexistent position. Agency did not notify employee of these personnel actions and his eligibility to elect a discontinued service retirement until February 1980. Office of Personnel Management denied employee's application for retirement on basis that employee cannot retire from nonexistent position. Agency may retroactively change effective date of separation to December 7, 1979, since agency did not provide employee with specific written notice prior to December 7, 1979, effective date of abolishment of position, of option to elect discontinued service retirement as required by regulation. This failure constitutes administrative error which justifies retroactive relief.

B-202103 July 16, 1981
*OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--HOUSE
PURCHASE--LOAN ORIGINATION FEE*

Employee who purchased residence incident to transfer may not be reimbursed for loan origination fee, tax registration fee, and loan extension fees, since such payments are finance charges under Regulation Z and are not reimbursable under FTRs, para. 2-6.2d (May 1973).

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

Employee who, incident to transfer, rented house in Juneau, Alaska, which he agreed to buy, is not entitled to temporary quarters subsistence expenses before settlement. Even though sellers had not executed earnest money agreement during period covered by claim, employee's intent at time he moved into quarters was clearly to make house his permanent residence.

B-199197 July 20, 1981

MILEAGE--TRAVEL BY PRIVATELY OWNED AUTOMOBILE--BETWEEN
RESIDENCE AND TEMPORARY DUTY POINTS--DISTANCE BETWEEN
RESIDENCE AND HEADQUARTERS

Employee of IRS who drove daily to temporary duty site near her headquarters claims mileage for travel between residence and temporary duty station. Agency regulation requires reduction in mileage beginning sixth day of assignment to temporary duty station. Limitation on mileage reimbursement in such situations is within the agency's discretion.

B-200421 July 20, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
TRANSPORTATION FOR HOUSE HUNTING--AUTHORIZATION

Employee transferred from Washington, D.C., to San Francisco, left Washington on authorized house-hunting trip on Aug. 2, 1980, pursuant to travel order dated July 3, 1980. On Aug. 2, 1980, while in San Diego en route to San Francisco, employee got married. Employee may not be reimbursed for wife's expenses of house-hunting trip to San Francisco since, 1. wife never was authorized househunting trip in advance, 2. lack of advance approval was not due to administrative error and 3. no advance verbal authorization of wife's travel was made.

B-202106 July 20, 1981

COMPENSATION--WAGE BOARD EMPLOYEES--PROMOTIONS--RETROACTIVE-
BACK PAY

Instrument Maker, WG-14, employee of Dept. of Army, claims that he was detailed to wage grade supervisory position, WS-14, and that he performed all duties of supervisory position. Dept. of Army claims that employee did not perform all of the supervisory functions. Evidence submitted by claimant fails to show that he was either detailed to or performed all duties of supervisory position. His claim for retroactive temporary promotion and backpay is denied.

B-202136 July 20, 1981

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

After retirement, employee received gross payment of \$1,364.80, representing erroneous payment of regular salary for pay period following his retirement. He also received erroneous payment of \$272.96 for 16 additional hours of annual leave. Employee received Earnings and Leave Statements with payments and he had duty to inquire as to correctness of payment of \$1,364.80 and did not. Thus, employee was not free from fault and request for waiver of \$1,364.80 is denied. Request for waiver of \$272.96 is granted because Earnings and Leave Statement showed 16 hours increase in annual leave and corresponding decrease in sick leave. Therefore, employee could have reasonably believed that this payment represented expected adjustment in his leave account.

INTEREST--DEBTS OWED UNITED STATES

While there is no general statutory provision authorizing agencies to assess interest on delinquent accounts, courts have recognized such right as measure of damages for delay in payment of obligation. We have held that agencies may charge interest on overdue accounts only when (1) rate of interest is not so high as to constitute a penalty, (2) interest is assessed only after proper notice of debt (including intent to charge interest) is given, and (3) debt itself is liquidated. 59 Comp. Gen. 359 (1980). Where, as here, record shows that agency did not follow notice requirements, we will disallow agency's claim for interest on overpayment.

*OFFICERS AND EMPLOYEES--DEBTS TO U.S.--LIQUIDATION--REPAYMENT
REQUIRED--GROSS v. NET AMOUNT*

Amount of employee's indebtedness for overpayment of pay is gross amount of pay rather than net amount of money received. While employee may not directly receive all monies earned, employer's withholding for Federal income tax or other purposes is made on behalf of employee and does not diminish amount of indebtedness for erroneous payment.

B-200794 July 23, 1981

SUBSISTENCE--PER DIEM--RATES--ADMINISTRATIVE DETERMINATION

Per diem which is provided at reduced rate for DOD employees traveling overseas where they have meals available at lower than commercial prices is not contrary to law and is not additional allowance prohibited by 5 U.S.C. 5536. Instead it is travel per diem authorized by law, 5 U.S.C. 5702 and 5707. Therefore, employee who claims per diem at higher rate on basis lower rate is unauthorized may not have his claim allowed.

B-201819 July 24, 1981

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

Employee resigned from Environmental Protection Agency and after break in service accepted job at Mine Safety and Health Administration (MSHA) and was paid erroneous rate for four pay periods after appointment with MSHA. Agency and Claims Group denied waiver under 5 U.S.C. 5584 and employee appeals. Denial is sustained. Although employee notified supervisor that he was receiving pay at higher rate than he expected, supervisor did not assure employee that he was being paid correctly. In absence of official notice that payments are not in error, employee cannot reasonably expect to retain excess payments without being obligated to make refund when error is corrected.

B-202297 July 24, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--HOUSE SALE--TERMITE INSPECTION FEE

Transferred employee who has been reimbursed one termite inspection fee incident to sale of his residence may not be reimbursed duplicate fee incurred in connection with loan commitment made by mortgage company that went bankrupt before sale of residence at old duty station could be consummated. Only one set of residence sale expenses incurred incident to completed sale is reimbursable under paragraph 2-6 of Fed. Travel Regs.

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B-202297 July 24, 1981 - Con.
OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
MISCELLANEOUS EXPENSES--NONREIMBURSABLE ITEMS--PROPERTY
MAINTENANCE COSTS

Transferred employee may not be reimbursed water testing and treatment charges paid to correct deficiencies in well water prior to sale of residence at old duty station. Though county health authority approval of water supply was required as condition to sale of residence, particular costs claimed were not for required certification, but were costs of maintenance of property. Maintenance costs are specifically disallowed by paragraph 2-6.2d of Fed. Travel Regs. and may not be paid as part of miscellaneous expenses allowance.

B-203204 July 24, 1981
PROPERTY--PRIVATE--DAMAGE, LOSS, etc.--PERSONAL PROPERTY--
GOVERNMENT LIABILITY

Civilian employee of Navy Dept. evacuated from Vietnam following fall of Saigon in 1975 had his claim under 31 U.S.C. 240-243 for personal property lost as result of evacuation disallowed by Navy because it was not timely filed. As to Comptroller General reporting matter to Congress as meritorious claim under Meritorious Claims Act, 31 U.S.C. 236, that act is construed to apply only to claims which come within Comptroller General's settlement jurisdiction. Since under 31 U.S.C. 242 Navy's settlement of such personal property claim in final and conclusive, Comptroller General has no jurisdiction in matter; therefore, claim is inappropriate for reporting to Congress under Meritorious Claims Act.

B-179965 July 28, 1981
LEAVES OF ABSENCE--INVOLUNTARY LEAVE--MEDICAL TREATMENT--
LEAVE STATUS

E.O. 5396, July 17, 1930, provides that disabled veterans employed in executive branch who are absent from work due to necessary medical treatment are entitled to use such annual or sick leave as may be permitted by law and such leave without pay as may be necessary. E.O. does not en-

title such disabled veteran to paid leave in excess of that which he would otherwise be entitled so that there is no entitlement to excused or administrative leave during period of medical treatment.

B-195235 July 28, 1981

COMPENSATION--PROMOTIONS--TEMPORARY--RETROACTIVE

NOAA employee assigned to "developmental" Administrative Officer, GS-11, claims backpay under Turner-Caldwell for detail to "full performance" Administrative Officer, GS-12, from October 31, 1971, to February 3, 1974. Classification Specialist evaluated employee's duties and responsibilities at GS-12 on December 27, 1972, and these were basically same as those of classified GS-12 position. Claim is denied from October 31, 1971, to December 27, 1972, because evidence is insufficient to prove detail. Detail is sufficiently proved from December 27, 1972, to February 3, 1974, and backpay is allowed beginning on 121st day of that detail.

B-204071 July 29, 1981

RETIREMENT--CIVILIAN--REEMPLOYED ANNUITANTS--ANNUITY DEDUCTION--VALIDITY

Retirement benefits of reemployed annuitant may not be reduced, by virtue of his reemployment, in absence of specific statutory authority. 16 Comp. Gen. 121 (1936); 32 Comp. Gen. 89 (1952); B-144579, February 1, 1961; and 45 Comp. Gen. 383 (1966), no longer for application.

B-199730 July 31, 1981

CLASSIFICATION--ACTIONS--EFFECTIVE DATE

Under 5 C.F.R. 511.701 (1980), effective date of classification action taken by agency is date action is approved in agency or subsequent date specifically stated. Section 511.702 provides that effective date of classification action upon appeal to agency or OPM, subject to provisions of section 511.703, is no earlier than date of decision on appeal.

1
B-199730 July 31, 1981 - Con.
COMPENSATION--DUTY PERFORMANCE--SALARY ONLY OF POSITION TO WHICH APPOINTED

Employee of Govt. is entitled to salary of position to which he is actually appointed, regardless of duties actually performed. When employee performs duties normally performed by one in grade level lower than one he holds, no requirement exists to reduce his salary to lower level until such time as individual is actually demoted to that level.

DEBT COLLECTIONS--WAIVER--CIVILIAN PERSONNEL--COMPENSATION OVERPAYMENTS--APPOINTMENT IMPROPER

Agency established and classified new GS-15 position and officially appointed employee to position effective September 2, 1979. Subsequently OPM reviewed position classification and on March 27, 1980, ordered agency to take corrective action including removal of employee from improper position. Agency removed employee effective September 7, 1980. Since matters relating to propriety of position classification are for agency and OPM, applying controlling legal authorities discussed in this decision, GS-15 rate payments received by employee from September 2, 1979, to March 27, 1980, are proper and not subject to claim by Govt. Payments at GS-15 rate after March 27, 1980, are erroneous but are hereby waived under 5 U.S.C. 5584.

GENERAL ACCOUNTING OFFICE--JURISDICTION--CIVIL SERVICE MATTERS--CLASSIFICATION OF POSITION

Because statutory authority to establish appropriate classification standards and to allocate positions subject to General Schedule rests with agency concerned and OPM, this Office has no authority to settle claims on any basis other than agency or OPM classification. Since OPM determinations on classification appeals are binding on this Office under 5 U.S.C. 5112(a), this Office has no authority to modify such actions.

B-199730 July 31, 1981 - Con. ' 1

OFFICE OF PERSONNEL MANAGEMENT--JURISDICTION--CLASSIFICATION
OF POSITIONS--AGENCY ACTIONS--REVIEW BY OPM

Agencies are authorized to classify positions in grades GS-1 through GS-15 consistent with published standards without prior approval of OPM under 5 U.S.C. 5107, grades thus assigned are basis for pay and personnel transactions. However, pursuant to 5 U.S.C. 5110 and 5112, agency classification actions are subject to review by OPM which may order corrective action if warranted.

B-200601 July 31, 1981

APPROPRIATIONS--AVAILABILITY--TRAVEL EXPENSES--RETURN TO
OFFICIAL STATION ON NONWORKDAYS

Where employee did not perform official duties during weekend return to residence and travel expenses of \$203.14 substantially exceed \$70, which would have been incurred had he remained at TDY station, travel expenses may not be authorized under agency's discretionary authority to direct employees to return to official station.

TRAVEL EXPENSES--RETURN TO OFFICIAL STATION ON NONWORKDAYS--
ADMINISTRATIVE DETERMINATION--COST ANALYSIS

Until such time as GSA issues guidelines concerning cost analysis, agencies can still effectively perform comparative analyses of costs of periodic weekend return travel versus any savings associated with increased efficiency and productivity, as well as costs of recruitment and retention. However, mere statement by agency that 3 week TDY assignment is sufficient to allow employees' travel expenses for voluntary weekend return travel does not comply with above analysis as no basis exists upon which to determine that net savings would accrue to Govt. as required in 55 Comp. Gen. 1291 (1976).

B-200601 July 31, 1981 - Con.
*TRAVEL EXPENSES--RETURN TO OFFICIAL STATION ON NONWORKDAYS--
REIMBURSEMENT--LIMITATION*

Forest Service employee who is on temporary duty (TDY) assignment and receiving per diem returned home for weekend. His travel expenses amounted to total of \$203.14. If he had remained at TDY station, he would have been entitled to total of \$70 per diem. Since employee's weekend round-trip travel was more than what would have been allowed had he remained at TDY station, employee was properly reimbursed \$70. See FTR (FPMR 101-7) paras. 1-7.5c and 1-8.4f (May 1973).

B-202564 July 31, 1981
*LEAVES OF ABSENCE--CIVILIANS ON MILITARY DUTY--LEAVE, etc.,
STATUS*

Civilian employee whose regular workweek includes Sunday, may not take military leave under 5 U.S.C. 6323(a) (1976) to attend weekend Navy Reserve drills since employee, as member of Reserve component of Armed Forces, is entitled to military leave under section 6323(a) only if he is on active duty under 10 U.S.C. 270(a) (1976), and drills are inactive duty.

B-197025 Aug. 3, 1981
COMPENSATION--DOWNGRADING--SAVED COMPENSATION--ENTITLEMENT

Employees, who accepted downgrade to grade GS-5 with salary retention, were subsequently promoted to grade GS-7 with pay rate rule. Employees are not entitled to rate in grade GS-7 based upon two-step increase from saved rate, since there is no statutory or regulatory basis for such pay setting formula.

B-198827 Aug. 3, 1981
TRAVEL EXPENSES--TEMPORARY DUTY--DEVIATION FOR PERSONAL REASONS

Employee was on temporary duty assignment at Albuquerque, New Mexico. He traveled to Topeka, Kansas, on Thanksgiving holiday weekend for personal reasons. His official duty station is Denver, Colorado. Employee may not

be reimbursed actual transportation expenses to and from Topeka since such travel is not to employee's headquarters or place of abode under FTR, para. 1-8.4f.

B-200022 Aug. 3, 1981

*TRAVEL EXPENSES--HEADQUARTERS--INADEQUACY OF TRANSPORTATION--
PUBLIC TRANSPORTATION STRIKE*

Employees of Dept. of Health and Human Services are not eligible for reimbursement of excess cost of commuting by taxicab, private car or other alternate means of transportation over normal public transit fares, despite complete public transit shutdown during April 1980 strike. Cost of transportation to place of duty is personal responsibility of employee, absent statutory or regulatory authority to contrary.

B-200856 Aug. 3, 1981

*TRAVEL EXPENSES--RETURN TO OFFICIAL STATION ON NONWORKDAYS--
REIMBURSEMENT--GUIDELINES*

Employee who is issued Govt. Transportation Requests for weekend return travel to permanent duty station while on temporary duty is not entitled to reimbursement for travel expenses incurred for personal reasons to locations other than permanent duty station. Under such circumstances employee is only entitled to per diem and any travel expenses which would have been allowable if employee had remained at temporary duty station.

B-201775 Aug. 3, 1981

COMPENSATION--DOWNGRADING--VOLUNTARY v. INVOLUNTARY

Employee who held GS-13 position with IRS transferred to GS-12 position with SBA after receiving notice his GS-13 position was to be abolished. Employee is not entitled to grade and pay retention since he was not placed in lower-grade position as result of formal reduction-in-force procedures but rather he voluntarily accepted downgraded position to avoid possible reduction-in-force procedures.

INTEREST--GENERAL RULE

Employee, whose pay was reduced from 1968 until 1981 by erroneous deduction of life insurance premiums, seeks refund with accumulated interest for entire period. It is well settled that interest may be assessed against Govt. only under express statutory or contractual authority. Fitzgerald v. Staats, 578 F.2d 435 (D.C. Cir. 1978). The Fed. Group Life Insurance Act of 1954, as amended, 5 U.S.C. 8701-8716, provides no express statutory authority by which employee may receive interest on insurance premiums. Claim for interest is denied.

OFFICERS AND EMPLOYEES--LIFE INSURANCE--CONTRIBUTIONS--ERRONEOUS DEDUCTIONS--REFUND

Employee who was adjusted to intermittent employment effective Aug. 25, 1968, and who, therefore, became ineligible for Fed. Employees' Group Life Insurance under 5 C.F.R. 870.202(a)(3) is entitled to reimbursement of premiums erroneously deducted from her pay after that date, subject to 6 year limitation on claims in 31 U.S.C. 71a.

STATUTES OF LIMITATION--CLAIMS--GENERAL ACCOUNTING OFFICE--EFFECT OF TIME LIMITATION--CLAIM BARRED

Life insurance premiums were erroneously deducted from employee's pay from Aug. 1968 until May 1981. Employee claims refund of premiums for entire period. Her claim was received in GAO on June 5, 1981. Under 31 U.S.C. 71a, claim bearing signature and address of claimant must be received in GAO to stop running of 6 year statutory limitation on filing of claims against U.S. Earlier filing of claim with employing agency does not stop running of statute. Consequently, refund claim is barred for period before June 5, 1975.

B-199943 Aug. 4, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
ADMINISTRATIVE DETERMINATIONS

Transferred employee's entitlement to relocation expenses is contingent upon, among other things, determination that transfer is not primarily for convenience or benefit of employee or at his request. Primary responsibility for determination rests with agency. GAO will not disturb agency's determination unless clearly erroneous, arbitrary or capricious. Neither possible misconception by agency as to why employee was building house at new duty station prior to transfer nor fact that employee was selected for announced vacancy is sufficient in and of itself to overturn agency's determination that transfer was primarily for employee's benefit.

B-200750 Aug. 4, 1981

TRAVEL EXPENSES--TEMPORARY DUTY--LODGINGS AND/OR MEALS--
PROCURED BY CONTRACTING OFFICER--APPROPRIATION LIMITATION

Ordinarily when Govt. contracting officer arranges to have hotel room made available at no charge to employee traveling on temporary duty, he is essentially acting as employee's agent. Since contracting officer may not do indirectly for employee that which statute or regulation forbids employee from doing directly, in such circumstances lodging expenses incurred by Govt. together with per diem allowed employee for meals and incidentals may not exceed maximum per diem rate prescribed by statute or regulation.

TRAVEL EXPENSES--TEMPORARY DUTY--LODGINGS AND/OR MEALS--
PROCURED BY CONTRACTING OFFICER--FURNISHED WITHOUT CHARGE--
PER DIEM RATE ESTABLISHMENT

Dept. of Interior leased camp trailers in summer of 1980 for use by employees detailed to drilling project in Wyoming. Dept. officials reasoned that because the Govt.'s average daily expense for providing trailer was computed at \$21 and maximum statutory per diem rate was then \$35, cash per diem allowable to employee for meals

and incidentals could therefore not exceed \$14. However, since trailers were Govt. quarters, rather than commercial lodgings rented indirectly on behalf of employees, that limitation should not have been applied and per diem rate should instead have been set commensurate with employees' subsistence needs exclusive of expense of those quarters.

*TRAVEL EXPENSES--TEMPORARY DUTY--LODGINGS AND/OR MEALS--
PROCURED BY CONTRACTING OFFICER--FURNISHED WITHOUT CHARGE--
PER DIEM RATE ESTABLISHMENT*

Occasionally, Govt. may be required to purchase or lease quarters for rent-free use by employees on temporary duty because commercial lodgings are unavailable or unsuitable. Expenses incurred in obtaining and maintaining Govt.-controlled quarters in those situations need not be taken into account in establishing per diem rate to cover employee's meals and incidental expenses. If special flat per diem rate is not established, amount payable is allowance prescribed by the FTRs for meals and incidental expenses under "lodgings-plus" system of computing per diem.

B-203010 Aug. 4, 1981

*TRANSPORTATION--AIR CARRIERS--FOREIGN--AMERICAN CARRIER
AVAILABILITY*

Traveler's certificate or memorandum stating that service by certificated air carrier was unavailable is not sufficient in itself to allow reimbursement for use of noncertificated carrier. Under Comptroller General's guidelines reasons for use of foreign carrier must be adequately explained. Decisions of Comptroller General contain further guidelines regarding adequacy of reasons for taking foreign carrier. The JTRs which require determination of unavailability by transportation or other appropriate officer and standards set forth in those regulations are in keeping with Comptroller General's guidelines and reimbursement cannot be allowed unless they are followed.

B-203037 Aug. 4, 1981

*DEPT COLLECTIONS--WAIVER--CIVILIAN EMPLOYEES--COMPENSATION
OVERPAYMENTS--FAILURE TO DEDUCT INSURANCE PREMIUMS*

In view of totality of circumstances, employee who received erroneous payments from Feb. 1968, to April 1976, when premiums were not deducted from her pay for Fed. Employees Group Life Insurance coverage is granted waiver of Govt.'s claim against her. Employee is not held at fault for overpayments, even though she selected regular coverage on life insurance form in 1968, and subsequently received 4 SF-50's indicating she had coverage. Insurance form indicates confusion on her part as to choice, and she had waived all coverage before 1968, and waived it again after notice of overpayments. SF-50's employee subsequently received were issued to reflect unrelated personnel actions and she received no other confirmation of coverage after completing form. Also, she verified a computer print-out of her personnel record in 1975, which showed no insurance coverage.

B-203123 Aug. 4, 1981

*QUARTERS--GOVERNMENT FURNISHED--AVAILABILITY DETERMINATION--
PER DIEM ENTITLEMENT*

Civilian employee of Dept. of Army who occupied commercial quarters while on temporary duty travel is not entitled to quarters portion of per diem allowance authorized by 5 U.S.C. 5702(a) (1976) where adequate Govt. quarters were available but not used.

B-202049 Aug. 5, 1981

COMPENSATION--OVERTIME--TRAVELTIME--COMMUTING TIME

Employee seeks overtime compensation for time spent traveling in Govt. bus to and from quarters and actual worksite. Compensation may not be paid since travel was not within regularly scheduled administrative work-week of employee. 5 U.S.C. 5542(b)(2).

B-195132 Aug. 6, 1981
*DETAILS--COMPENSATION--HIGHER GRADE DUTIES ASSIGNMENT--
UNCLASSIFIED POSITION*

Although classified GS-15 position did not exist in HEW Region X, GS-14 employee claims backpay under Turner-Caldwell and principle of equal pay for equal work, contending his duties were: (1) same as those classified in GS-15 in other regions; (2) subsequently classified as GS-15 in Region X; and (3) covered by standard GS-15 position used in other regions which would have been established in Region X but for wrongful refusal of Regional Personnel Officer. Claim must be denied under Turner-Caldwell because employee was not detailed to position classified in higher-grade, and under United States v. Testan which holds there is no entitlement to backpay for period of claimed wrongful classification.

B-198903 Aug. 6, 1981
*ALASKA RAILROAD--CLAIMS--PROSECUTION BY RAILROAD--NO LEGAL
OBLIGATION*

Alaska Railroad is not legally obligated to assist in prosecution of claims against its interest by conducting special audit to identify and reimburse possible over-deductions from employees for life insurance premiums, especially where employees have capacity to compute the correctness of their own deductions. However, waiver of over-deductions under 5 U.S.C. 5584 is not available for the benefit of Govt. in these circumstances. Railroad should provide general notice of potential discrepancy, and individually audit and adjudicate claims subsequently submitted within applicable limitations period.

*ALASKA RAILROAD--EMPLOYEES--HEALTH BENEFITS--PREMIUM PAYMENTS
BY RAILROAD*

Alaska Railroad has in past contributed more than 75 percent toward employee premium costs for health insurance in contravention of 5 U.S.C. 8906(b)(2). Comptroller General concurs with Railroad's assertion that administrative costs of conducting full 6-year audit and maintaining such large number of relatively

small individual collection actions are likely to exceed realistic estimated recovery and go far beyond point of diminishing returns. Thus, this case meets standards for termination of collection set forth in Fed. Claims Collection Act of 1966 (31 U.S.C. 951, et. seq.) and implementing standards.

Congress passed Federal Employees Health Benefits Act (5 U.S.C. 8901, et. seq.) (FEHBA) to establish comprehensive health benefits program for Fed. employees. Act imposes 75 percent ceiling on agency's contributions to employee premiums and all participating agencies are bound by that limitation unless specifically exempted. Thus, although Alaska Railroad Act of March 12, 1914 (43 U.S.C. 975, et. seq.) confers broad authority on President or his designee to fix compensation of employees of Railroad, Alaska Railroad may not independently restructure its participation in FEHBA program by increasing its contribution beyond 75 percent ceiling.

The Alaska Railroad may not on its own initiative or through collective bargaining impair or alter the specific limits established by 5 U.S.C. 8906(b)(2) for its contributory participation under the Federal Employees Health Benefits Act (FEHBA). However, we find nothing in our combined review of Alaska Railroad Act and FEHBA that prohibits agency from continuing pre-existing health programs. Congress was aware of existence since 1954 of Alaska Railroad Medical Association Program and nothing in the FEHBA or its legislative history indicates congressional intent to require Railroad to discontinue that program.

Under color of its authority to fix compensation of its employees, Alaska Railroad negotiated collective bargaining agreements with railroad unions representing Railroad employees which erroneously included provisions for Railroad to contribute more than 75 percent toward employee premium costs for health insurance in contravention of 5 U.S.C. 8906(b)(2). Since collective bargaining provisions here involved have been negotiated

over long period and this decision is first stating such provisions are illegal, Railroad, in order to cushion impact, is authorized to delay compliance with this decision until the adjournment of 97th Congress.

B-201771 Aug. 6, 1981

OFFICERS AND EMPLOYEES--NEW APPOINTMENTS--RELOCATION EXPENSE REIMBURSEMENT AND ALLOWANCES--NON-ENTITLEMENT--FORMER POSTAL SERVICE EMPLOYEE

Former Postal Service employee who transferred to new position in Florida with FAA must refund relocation expenses erroneously paid incident to his move from Georgia to Florida, notwithstanding that FAA officials misadvised him about his entitlements. The U.S. is not bound by mistakes of its agents or officials, and persons receiving money erroneously paid by Govt. agency or official acquire no right to money but are instead liable to make restitution. 59 Comp. Gen. 28 (1979).

POSTAL SERVICE, UNITED STATES--EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--ELIGIBILITY

Under Postal Reorganization Act of 1970, which established independent Postal Service and excluded Postal Service from definition of "executive agency" for purposes of title 5 of United States Code, former Postal Service employees who obtain new positions with executive agencies must be considered new agency employees who are not eligible for reimbursement of relocation expenses authorized by 5 U.S.C. 5724 and 5724a for agency employees transferred from one official station or agency to another for permanent duty.

B-197771 Aug. 11, 1981

*OFFICERS AND EMPLOYEES--RESIGNATION--EFFECTIVE DATE--
RETROACTIVE CHANGE TO AVOID BREAK IN SERVICE*

Attorney employed by HUD, in Washington, D.C., was offered position as law clerk to Judge of U.S. Bankruptcy Court in San Diego, California. He resigned from position with HUD on Oct. 5, 1979, and reported for duty at San Diego on Oct. 29, 1979. Since it was known to all parties, prior to resignation, that employee was resigning to accept another Federal position and it was clear intent of Administrative Office of U.S. Courts to pay relocation expenses, employee's separation date from HUD may be retroactively adjusted to avoid break in service and to permit payment of relocation expenses.

B-198575 Aug. 11, 1981

*OFFICERS AND EMPLOYEES--DE FACTO--COMPENSATION--REASONABLE
VALUE OF SERVICES PERFORMED*

Former Energy Research and Development Administration consultant who performed services for Dept. of Energy at request of agency officials before appointment was renewed may be compensated for reasonable value of services since he served as de facto employee performing duties in good faith under color of authority.

*SUBSISTENCE--PER DIEM--ACTUAL EXPENSES--HIGH RATE AREAS--
TEN-HOUR RULE--APPLICABILITY*

Consultant is entitled to subsistence reimbursement even on days when he was in travel status for 10 hours or less to high-rate geographical area (HRGA) since travel was performed prior to issuance of 58 Comp. Gen. 810 (1979), which held that 10-hour rule applied to HRGA. In Nicholas M. Veneziano, B-194197, December 24, 1980, this rule was held to apply prospectively only.

B-198575 Aug. 11, 1981 - Con.
SUBSISTENCE--PER DIEM--AUTHORIZATION REQUIREMENT

Although FTRs permit agencies to prescribe per diem allowance under certain conditions for travel to high-rate geographical areas, DOE consultant is entitled only to actual expense reimbursement rather than per diem reimbursement for travel when orders do not authorize per diem.

B-199646 Aug. 11, 1981
COMPENSATION--OVERTIME--TRAVELTIME--WEATHER CONDITIONS ADVERSE

IRS employees, whose return trips to their official duty stations were interrupted by snowstorm, resumed their return travel outside regular duty hours. They are not entitled to overtime compensation for traveltime since their travel did not meet any of the conditions set forth in 5 U.S.C. 5542(b)(2)(B) (1976).

B-197105 Aug. 12, 1981
DETAILS--COMPENSATION--HIGHER GRADE DUTIES ASSIGNMENT--
CLASSIFICATION DOWNGRADE--EFFECT

Employee of GAO was detailed to higher-graded position on Sept. 29, 1975. He was transferred with his position to GSA on Oct. 12, 1975, and continued to perform higher-grade duties. Employee is entitled to retroactive temporary promotion and backpay for period of detail beyond 120 days until position was reclassified downward on July 15, 1976. Evidence in record indicates vacant, higher-graded position was transferred to GSA upon transfer of function. Further, prohibition on temporary promotions for details between agencies is not applicable under these circumstances. B-197105, September 30, 1980, sustained.

Grade GS-14 employee of GAO was detailed to grade GS-15 position on Sept. 29, 1975. Both positions were transferred to GSA on Oct. 12, 1975, as part of transfer of function, and employee continued to perform higher-grade duties until grade GS-15 position was reclassified at grade GS-14 level in 1976. Section 202(b) of Pub. L.

No. 93-604 authorizing transfer of function protects personnel - as opposed to positions - from reclassification for period of 2 years. Employee continued to be incumbent of position from which detailed, and his permanent position was not reduced in classification or compensation during 2-year period. Personnel protections contemplated by statute have been afforded employee and do not extend to vacant, higher-graded position duties of which employee performed incident to informal detail.

B-199462 Aug. 12, 1981

SUBSISTENCE--PER DIEM--"LODGING-PLUS" BASIS--TRAILER OR CAMPER UTILIZATION

Employee of National Park Service is entitled to per diem rate based on lodging-plus method for rental cost of camping vehicle used as lodging during temporary duty assignment (TDY). Although depreciation charge for use of employee's own camping vehicle as lodging on TDY may be considered nonreimbursable personal cost, rental of camping vehicle for lodging is direct cost of TDY and is allowable as lodging expense in computation of per diem.

B-199800 Aug. 12, 1981

DEBT COLLECTIONS--WAIVER--CIVILIAN EMPLOYEES--COMPENSATION OVERPAYMENTS

Employee received excess foreign living quarters allowances through administrative error. Though allowances owed employee fluctuated, employee should have been on notice of possible overpayment when he received allowance approximately 4 times amount he had been receiving. Request for waiver is denied for all overpayments received after large overpayment since his failure to make inquiry indicates that he was partially at fault. Waiver is granted for smaller overpayments made prior to large overpayment.

B-200548 Aug. 12, 1981
LEAVES OF ABSENCE--LUMP-SUM PAYMENTS--RATE AT WHICH PAYABLE--
SUBSEQUENT TO SEPARATION, RETIREMENT, etc.

Employee, grade GS-13, step 9, retired from his position, and then was rehired as part-time reemployed annuitant at GS-12, step 10, before expiration of period covered by his lump-sum annual leave payment. Employee is entitled to be paid for lump-sum annual leave at rate for GS-13, step 9, for period between retirement and reemployment. After separation from GS-12 position he is entitled to receive lump-sum annual leave payment only at rate for GS-12, step 10.

B-200650 Aug. 12, 1981
MEALS--HEADQUARTERS

Employee of Forest Service who attended several working lunches and dinners as member of General Management Review Team at his official duty station may not be reimbursed for these meals even though team leader felt it was necessary to have all team members present to carry on business at hand since in absence of specific statutory authority allowing reimbursement, the Govt. may not pay for meals of civilian employees at their headquarters.

B-200779 Aug. 12, 1981
SUBSISTENCE--PER DIEM--HEADQUARTERS--PROHIBITION AGAINST
PAYMENT

Employee stationed in Portland, Oregon, rented hotel room rather than return to her residence 20 miles away, due to heavy snow and icy roads, because she was required to report to work next day no matter what weather conditions prevailed. Claim must be denied as employee may not receive per diem or subsistence at official duty station, unless situation involves imminent danger to life or property.

B-201251 Aug. 12, 1981

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

Employee must bear excess cost of temporary storage of household goods above statutory weight limitation of 11,000 pounds, even though Govt. was shipper under a Govt. Bill of Lading and storage was required because Govt.'s carrier failed to perform. Weight limitation is express statutory restriction. Regardless of any extenuating circumstances, weight limitation may not be exceeded.

B-200670 Aug. 14, 1981

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

Four employees, whose schedules were changed by their supervisor from 8 a.m. - 4:30 p.m. to 4:30 p.m. - 1 a.m. for period in excess of 2 weeks so they could be present during annual inventory of furniture and equipment, claim entitlement to night differential pay. Although prior approval for schedule change was not received from appropriate official, employees are entitled to night differential pay for work performed between 6 p.m. and 6 a.m. 36 Comp. Gen. 657 (1957), distinguished.

B-201416 Aug. 14, 1981

*OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
HOUSE PURCHASE--LOAN CHARGES*

In connection with Farmers Home Administration Guaranteed Rural Housing Loan, employee was required to reimburse lender for fee equal to one percent of portion of loan which was guaranteed. Employee may not be reimbursed for such fee since it appears to fall within definition of finance charge contained in Regulation Z, 12 C.F.R. 226.4a(7), and it is more in nature of charge for hire of money than reimbursement of administrative costs of processing loan.

B-202243 Aug. 14, 1981

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

Employee's family joined him in temporary quarters at his new duty station for 10 days, but, due to unexpected canceling of contract for purchase of new home at his new duty station, returned to and occupied their former residence pending purchase of another home. Since record shows objective evidence of his family's intent to vacate their former residence when they joined him at his new duty station, employee is entitled to temporary quarters subsistence expenses for his family under para. 2-5.2 of FTRs for 10-day period.

B-196571 Aug. 17, 1981

*COMPENSATION--OVERTIME--FAIR LABOR STANDARDS ACT--CLAIMS--
SETTLEMENT AUTHORITY*

Food inspector claimed overtime compensation under Fair Labor Standards Act (FLSA), 29 U.S.C. 201 et seq. (1976), for performing various duties outside of her regular working hours. Agency denied claim because of lack of documentation. Office of Personnel Management (OPM), which is authorized to administer FLSA, found that inspector spent estimated 46-3/4 hours on uncompensated working time. We shall not disturb OPM's factual findings as they are not clearly erroneous. Inspector is entitled to FLSA overtime pay for 46-3/4 hours.

B-199957 Aug. 17, 1981

TRANSPORTATION--TRAVEL AGENCIES--USE APPROVED

Employee was unaware of restrictions on use of travel agents and agency allowed him to obtain his own transportation. To extent otherwise allowable, employee may be reimbursed for airline tickets purchased from travel agent in amount not to exceed cost of transportation if purchased directly from carrier. 59 Comp. Gen. 433 (1980).

B-199957 Aug. 17, 1981 - Con.

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

Although use of foreign air carrier is justified for trip to temporary duty location, employee incurred penalty for use of foreign air carrier for return trip, to be computed under formula in 56 Comp. Gen. 209 (1977), in absence of satisfactory proof of necessity therefor.

*TRAVEL EXPENSES--AIR TRAVEL--FOREIGN AIR CARRIERS--PROHIBITION--
AVAILABILITY OF AMERICAN CARRIER*

Where agency confirms fact that it was essential to mission of agency that employee report for temporary duty at specific time, and no American air carrier provided necessary service, use of foreign air carrier for trip to temporary duty location does not violate Fly America Act. Agency determination that American air carrier cannot meet its transportation needs will not be questioned by this Office unless arbitrary or capricious. 59 Comp. Gen. 66 (1976).

B-200287 Aug. 17, 1981

COMPENSATION--OVERTIME--TRAVELTIME--ARDUOUS CONDITIONS

Employees' claims for overtime for time spent stranded in Chicago due to a blizzard and for traveling home on Saturday are not payable. The additional time is not hours of work within the meaning of 5 U.S.C. 5542. 50 Comp. Gen. 519 (1971) distinguished.

B-200257 Aug. 18, 1981

*OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
HOUSE PURCHASE--CLOSING CHARGES--PAID BY SELLER*

Employee claims closing costs incident to purchase of new home. Agency questions claim since settlement sheet shows that closing costs were paid by seller. Closing costs paid by seller but included in sales price of residence may be allowed where they are clearly discernible and separable from price of realty, where both

buyer and seller regard costs as having been paid by buyer, and where buyer documents costs and his liability therefor. Since seller in this case declines to state that closing costs were paid by buyer, and buyer has presented no evidence to rebut that statement, claim may not be allowed.

B-200257 Aug. 18, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--HOUSE PURCHASE--EXPENSES CLAIMED INCLUDED IN SELLING PRICE

Agency asks whether rule of our decision Henry F. Holley, 56 Comp. Gen. 298 (1977), applies to homes purchased from private individuals in resale market. Our decision in Holley allowed reimbursement of closing costs nominally paid for by seller but, in actuality, added to sales price of realty and paid for by buyer. Rule in Holley has been applied to transactions in resale market to allow payment of such costs.

B-202026 Aug. 18, 1981

COMPENSATION--OVERTIME--COMPENSATORY TIME--FORFEITURE

Employee whose basic rate of pay exceeded maximum for GS-10 was credited with compensatory time for occasional overtime work while on temporary duty. Employee voluntarily retired without using compensatory time and seeks payment for overtime work. Since agency regulations require that employee earning at rate in excess of that for GS-10 receive only compensatory time for occasional overtime and that upon voluntary retirement any unused compensatory time be forfeited, no basis exists to pay employee.

B-202200 Aug. 18, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--ADMINISTRATIVE DETERMINATIONS--BUDGET CONSTRAINTS

Employee of Federal Mediation and Conciliation Service, transferred from Houston to San Antonio, was authorized travel, per diem, relocation, and miscellaneous expenses, but not real estate expenses apparently due to budgetary

constraints. He is entitled to reimbursement of real estate expenses in accordance with Part 6, Chapter 2 of FTRs contemplate that certain expenses will be uniformly allowed to all transferred employees, and budgetary constraints are not acceptable reason for denying expenses permitted by regulation.

B-198142 Aug. 19, 1981

COMPENSATION--PROMOTIONS--TEMPORARY--DETAILED EMPLOYEES--CLAIM DENIED

Two employees, whose temporary promotions were terminated by their agency, continued to perform higher-level duties after termination. They are not entitled to backpay under Turner-Caldwell decisions because period of detail after termination of temporary promotions did not exceed 120 days.

COMPENSATION--PROMOTIONS--TEMPORARY--TERMINATION--CLAIM DENIED

Two employees were given temporary promotions not to exceed 1 year. During that period, agency without prior notice to employees terminated temporary promotions as part of major reorganization. They claim backpay because they were not notified of termination until after it became effective and because they continued performing higher-level duties. Since temporary promotions may be terminated at any time in agency's discretion, and employees knew or should have known of terminations, claims of two employees for backpay are denied.

B-202506 Aug. 20, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--TRANSPORTATION FOR HOUSE HUNTING--"ONE ROUND TRIP" LIMITATION

Employee may not be paid a per diem allowance on second house-hunting trip, since only one round trip is authorized under 5 U.S.C. 5724a(a)(2). The 6 days including travel time authorized under paragraph 2-4.1a of FTRs (FPMR 101-7) must run consecutively.

B-200027 Aug. 24, 1981

*LEAVES OF ABSENCE--FORFEITURE--ADMINISTRATIVE ERROR--RESTORED
LEAVE*

Employee forfeited annual leave scheduled in advance since he was assigned to attend training seminar. Annual leave may be restored since failure to present case to appropriate agency official for exigency determination constitutes administrative error which would allow restoration of annual leave.

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

Employee, in Pittsburgh, who had annual leave scheduled in Los Angeles, was assigned to attend training seminar in San Diego immediately prior to scheduled annual leave. Employee stayed in California after training and claims reimbursement for travel from Pittsburgh to San Diego, San Diego to Los Angeles, and Los Angeles to Pittsburgh. If employee had returned to Pittsburgh after training was completed, he would have been eligible for airline half-fare discount coupon. Agency correctly limited reimbursement to such cost since regulations provide that reimbursement is based on such charges as would have been incurred by usually traveled route, or interrupts travel. Also, regulations require agency to use half-fare coupons if its use will achieve savings to Govt.

B-200691 Aug. 24, 1981

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

Employee who sold residence at old duty station in 1975 may not be reimbursed legal fee of \$250 incurred incident to that sale since legal fee is not itemized so that allowable cost may be separated from costs of representation and counseling. Compare 56 Comp. Gen. 561 (1977) for transfers subsequent to April 27, 1977.

B-200691 Aug. 24, 1981 - Con.

*SUBSISTENCE--PER DIEM--HEADQUARTERS--PERMANENT OR TEMPORARY--
TRANSFER EFFECTIVE DATE*

Notwithstanding rule that per diem is not payable at permanent duty station, employee claims per diem for period between July 1, 1973, and June 1975 for duty in Hartford area on basis that Hartford did not become his new duty station until Standard Form 50 evidencing transfer was issued in June of 1975. Since record otherwise establishes that employee was transferred to Hartford effective July 1, 1973, agency's failure to issue travel orders and otherwise formally document transfer until 1975 does not provide basis to pay per diem claimed or to reimburse expenses of househunting trip undertaken more than 2 years after effective date of transfer.

B-200945 Aug. 24, 1981

*OFFICERS AND EMPLOYEES--OVERSEAS--HOME LEAVE--ADMINISTRATIVE
DETERMINATION*

Employee took annual leave in U.S. after his request for home leave had been denied on basis of agency's refusal to extend his overseas tour of duty and fact that reassignment to U.S. was imminent. Granting of home leave is within agency discretion. Under circumstances, refusal to grant home leave was proper and home leave may not be substituted for annual leave taken even though agency subsequently agreed to employee's request to extend overseas tour of duty for additional year. Circumstances of employee's travel did not meet conditions for renewal agreement travel.

B-201358 Aug. 24, 1981

*LEAVES OF ABSENCE--FORFEITURE--ADMINISTRATIVE ERROR--RESTORED
LEAVE*

Due to administrative error, employee was led to believe he was entitled to carry over 45 days of annual leave as opposed to 30 days. Employee carried over more than 30 days' leave in several years prior to his retirement. Pursuant to 5 U.S.C. 6304(d)(1)(A) annual

leave in excess of the 30 days may be restored and employee may be paid for all annual leave accrued as of date of retirement. That section provides for restoration of annual leave forfeited because it is in excess of maximum carryover when forfeiture is due to administrative error.

B-201358 Aug. 24, 1981

OFFICERS AND EMPLOYEES--OVERSEAS--HOME LEAVE--ERRONEOUSLY GRANTED AND USED--RESTORATION OF ANNUAL LEAVE CHARGED

Navy employee who was hired locally, in Guam, was erroneously granted home leave. Upon employee's retirement, Navy reconstructed annual leave account and charged employee's account with number of days of home leave taken. Employee is entitled to waiver of home leave erroneously granted and used. Annual leave account is recredited with number of days charged to it for home leave.

B-201574 Aug. 24, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--TEMPORARY QUARTERS--EVIDENCE OF EXPENSES

Incident to permanent change of station, employee and dependents occupied second residence owned by employee which normally had been rented out for 4-week period but otherwise used as personal residence during summer season. Employee may not be paid temporary quarters subsistence expense allowance for lodging costs where it is established that lodging, though temporary, was at employee's summer residence and only evidence employee lost rent is his own statement concerning his actions in past and rent he feels appropriate. In circumstances payment for loss of rent would be too speculative.

B-196178 Aug. 25, 1981

CLAIMS--EVIDENCE TO SUPPORT--ADMINISTRATIVE RECORDS CONTRARY TO ALLEGATIONS--ACCEPTANCE OF ADMINISTRATIVE STATEMENTS

GAO decides claims against U.S. on basis of written record. Reasonable doubts are resolved in favor of Govt. since claimant has burden of proving liability

of U.S. and claimant's right to payment. 4 C.F.R. 31.7. Therefore, where, as here, there is dispute between employee claiming backpay and his agency as to material facts which this Office cannot resolve from written record, claim will not be allowed.

B-196178 Aug. 25, 1981

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

In claim for detail under Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed 56 id. 427 (1977), questions of existence of position, and of whether employee performed full scope of duties and responsibilities of higher-grade position are factual in nature.

B-201382 Aug. 26, 1981

*OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
TEMPORARY QUARTERS--COMPUTATION OF ALLOWABLE AMOUNT--THIRTY
DAY PERIOD*

Employee who was transferred to Alaska sought additional temporary quarters subsistence expenses beyond initial 30-day entitlement under discretionary authority provided in 5 U.S.C. 5724a(a)(3) (1976). In accordance with its established policy, agency denied extension based on finding that employee's voucher did not justify necessity for additional time in temporary quarters and there was no evidence that extension was required for reasons beyond employee's control or unique to particular area. Since it is the responsibility of employing agency, in first instance, to determine that subsistence expenses are necessary and reasonable, GAO will not challenge agency's determination unless arbitrary, capricious, or contrary to law.

*SUBSISTENCE--PER DIEM--RATES--LODGING COSTS--STAYING WITH
FRIENDS, RELATIVES, etc.*

Transferred employee's claim for \$30 per day for temporary quarters while residing with sister-in-law at new duty station is denied. Where employee seeks reimbursement for temporary quarters occupied at home of friend

or relative, his claim may not be paid where employee has not furnished information as to extent friend or relative incurred additional expenses. Burden is on employee to supply necessary information supporting claim and it is not sufficient to show merely that amount claimed is less than commercial rates or maximum allowable rate.

B-204046 Aug. 27, 1981

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

Transferred Fed. employee who sold 30-acre tract of land and mobile home where he had resided at his old duty station may be reimbursed for expenses of land sale only on prorated basis since applicable regulations require that reimbursement be limited to expenses of selling that part of land "which reasonably relates to the residence site," and employing agency determined that only one-third of 30-acre tract was reasonably related to employee's homesite. Agency's determination may not be disturbed in absence of proof that it is clearly erroneous. Para. 2-6.1f, FTR. 54 Comp. Gen. 597 (1975).

B-202544 Aug. 31, 1981

TRAVEL EXPENSES--RETURN TO OFFICIAL STATION ON NONWORKDAYS--ADMINISTRATIVE DETERMINATION--COST ANALYSIS

Under 55 Comp. Gen. 1291 (1976), employees on extended temporary duty assignments (TDY) may be reimbursed their travel expenses in returning home on weekend if agency conducts cost analysis and determines that periodic weekend return travel would result in savings in terms of increased productivity and reduced costs of recruitment and retention. Federal Home Loan Bank Board, without cost analysis, allows field examiners to return home 1 weekend for every 4 weeks of TDY. The Board may temporarily continue its current practice, but must conduct cost analysis before renegotiating current collective bargaining agreements or changing current practice.

B-202544 Aug. 31, 1981 - Con.

TRAVEL EXPENSES--RETURN TO OFFICIAL STATION ON NONWORKDAYS--
RETURN TRAVEL DURING OFFICIAL DUTY HOURS--PROPRIETY

Weekend return travel should be performed outside employee's regular duty hours or during periods of authorized leave. Authorized leave includes scheduled and approved annual or sick leave, compensatory time off, and leave without pay. Administrative leave does not constitute authorized leave within meaning of that term as used in 55 Comp. Gen. 1291.

B-200745 Sept. 1, 1981

ORDERS--AMENDMENT--AFTER TRAVEL COMMENCED

Orders directing employee's permanent change of station to Philadelphia for 2- to 4-month period in contemplation of permanent assignment to Albany, Georgia, are subject to retroactive modification to reflect fact that assignment to Philadelphia was for temporary duty. Assignment for 2 to 4 months is generally temporary duty assignment, and though JTRs provide guidance in directing permanent change of station for assignments longer than 2 months, record does not indicate that determination to transfer employee to Philadelphia was made on basis of that guidance.

B-201615 Sept. 1, 1981

TRANSPORTATION--HOUSEHOLD EFFECTS--ACTUAL EXPENSES--ALLOWANCE BASIS

Although employee's travel orders authorized actual expense shipment by Govt. Bill of Lading (GBL), employee is not entitled to actual expenses in excess of commuted rate where he makes his own arrangements for transportation of household goods. Determination to ship by GBL is required to be made on basis of potential savings to Govt. over cost of commuted rate reimbursement. Since cost savings can only be realized where goods are in fact shipped by GBL, employee who made own shipping arrangements by commercial bill of lading is entitled to reimbursement under commuted rate system, even though reimbursement is less than actual cost.

B-201652 Sept. 1, 1981

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

Employee was transferred from Corps of Engineers' Smithland Project in Western Kentucky, to Patoka Lake, near Jasper, Indiana, then subsequently transferred to Laurel Lake Project near Corbin, Kentucky. Residence he had for sale at his first duty station was sold after his second transfer. He is entitled to residence sale expense reimbursement since that residence was one from which he commuted to work prior to first transfer, sale was effected 5 months after first transfer and evidence shows sale was incident to first transfer.

B-202420 Sept. 1, 1981

*STATUTES OF LIMITATION--CLAIMS--DATE OF ACCRUAL--COMPENSATION
PAYMENTS*

Any part of employee's claim for hazardous duty pay that accrued more than 6 years beyond its recording in GAO is barred by 31 U.S.C. 71a (1976). GAO is without authority to disregard this statute. However, erroneous payments of similar claims covering more than 6 years made by agency due to administrative error may be waived under 5 U.S.C. 5584 (1976).

B-202687 Sept. 1, 1981

*OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
HOUSE SALE--PRIOR TO OFFICIAL NOTICE OF TRANSFER*

Employee sold residence at old duty station after receiving notice of reduction in force coupled with verbal offer of assistance in relocating within Dept. Employee may be reimbursed for expenses of sale as clearly evident administrative intent to transfer employee existed at time expenses were incurred.

B-201183 Sept. 3, 1981

OFFICERS AND EMPLOYEES--LIFE INSURANCE--CONTRIBUTIONS--
ERRONEOUS DEDUCTIONS--COVERAGE WAIVER

Employee may be refunded Federal Employees' Group Life Insurance premiums erroneously deducted for optional insurance for which he was ineligible. However, no interest is allowable on refund and there may be no repayment for erroneous deductions made more than 6 years before claim was filed with GAO. Such repayment is time barred under 31 U.S.C. 71a.

B-202424 Sept. 4, 1981

COMPENSATION--ADDITIONAL--SUPERVISION OF WAGE BOARD EMPLOYEES--
RETROACTIVE PAY ADJUSTMENTS

General Schedule employee who received pay adjustment effective Dec. 2, 1979, as supervisor of prevailing rate employee with higher pay may not be granted retroactive pay prior to that date. Entitlement to pay adjustment was within discretion of agency since prior agency policy on pay adjustments was suspended during period of claim here and there was no abuse of discretion which warrants retroactive compensation.

B-202386 Sept. 8, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--PRIOR
TO TRANSFER

Employee of Dept. of Health and Human Services became legally obligated to sell former residence and purchase new residence in Virginia, prior to issuance of travel orders or formal notice of transfer. Employee may not be reimbursed real estate expenses claimed although travel orders subsequently issued authorized reimbursement for real estate transaction expense. For employee to be entitled to reimbursement, there would have to have been clear administrative intention to transfer employee and none existed when employee became obligated to buy and sell residences.

B-203151 Sept. 8, 1981

TAXES--STATE--GOVERNMENT IMMUNITY--TAXES IMPOSED ON OTHER THAN GOVERNMENT--GOVERNMENT EMPLOYEE

Employee who rented automobile in her own name while on househunting trip in Colorado is entitled to be reimbursed 6-1/2 percent state and local sales tax paid in connection with rental. Incidence of tax is on employee as lessee and fact that Govt. is obligated to reimburse employee for her car rental expenses and thereby assumes economic burden of total costs, including tax, does not thereby make it tax upon U.S. Govt. is not "purchaser" and may not assert its immunity from state and local sales tax levied upon rental of cars.

B-204213 Sept. 9, 1981

ATTORNEYS--FEES--BAR MEMBERSHIP DUES--GOVERNMENT ATTORNEYS

Attorney employed by Internal Revenue Service may not be reimbursed for State bar membership dues since bar dues are a personal expense and are not payable from appropriated funds. 5 U.S.C. 5946 (1976).

B-202213 Sept. 10, 1981

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

Waiver under 5 U.S.C. 5584 of overpayment may not be granted to employee who had reason to know that deductions should have been made from pay for regular Federal Employees Group Life Insurance. Not having signed waiver of insurance employee automatically had regular insurance and should have noted that insurance coverage was indicated on standard form she signed, and on Notice of Personnel Action she received.

B-199621 Sept. 11, 1981

TRAVEL EXPENSES--MODES OF TRAVEL--OTHER THAN AUTHORIZED

Employee of Forest Service who traveled by privately owned airplane in lieu of common carrier as exercise of personal preference is not entitled to reimbursement on constructive cost basis. Reimbursement was

denied by agency based on regional regulation prohibiting authorization of travel by private aircraft for safety reasons. Regulation is proper under FTR para. 1-2.2d and is not arbitrary or capricious.

B-203928 Sept. 11, 1981

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

Employee appeals action of Claims Group which denied retroactive temporary promotion and backpay under Turner-Caldwell, 56 Comp. Gen. 427 (1977), on basis that detail was less than 240 days. Disallowance is affirmed as details commencing after February 15, 1979, are covered by FPM Bulletin 300-48, March 19, 1979, which permits agencies to detail employees for up to 240 days without OPM approval.

B-198120 Sept. 18, 1981

CLAIMS--EVIDENCE TO SUPPORT--ADMINISTRATIVE RECORDS CONTRARY TO ALLEGATIONS--ACCEPTANCE OF ADMINISTRATIVE STATEMENTS

Agency's administrative record and employee's statement contain irreconcilable disputes of fact. Where such written statements so conflict, this Office has no alternative but to accept agency's statement of facts. Since claim is doubtful due to lack of suitable evidence we must deny claim for subsequent period.

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

Civilian employed by Dept. of Army as Training Instructor (Munitions), GS-11, claims retroactive temporary promotion and backpay for alleged detail to and performance of higher-level duties of Training Instructor (Munitions), GS-12. Letter from former supervisor demonstrates his acquiescence in and employee's performance of higher-level duties for initial period of claim, so as to constitute detail. Employee is entitled to relief under Turner-Caldwell line of decisions for that period.

B-200744 Sept. 18, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
REAL ESTATE EXPENSES--LIMITATION ON REIMBURSEMENT--ONE SALE
AND ONE PURCHASE

Civilian employee of IRS, upon transfer, purchased residence at new duty station. He seeks reimbursement of costs of appraisal and credit report in first attempt to purchase residence which was unsuccessful as property did not appraise for sufficient amount to permit FHA to guarantee loan. Employee then obtained conventional financing and was required to pay for new appraisal and credit report, for which he has been reimbursed. Employee may be reimbursed for only one set of authorized real estate expenses relating to one sale and one purchase. Hence, claim is disallowed.

B-201542 Sept. 18, 1981

MILEAGE--TRAVEL BY PRIVATELY OWNED AUTOMOBILE--ADVANTAGE TO
GOVERNMENT--DETERMINATION REQUIREMENT

FAA entered into agreement with Federal Aviation Science and Technology Association, National Association of Government Employees (FASTA/NAGE) which authorized travel by privately owned vehicle (POV) for members of bargaining unit attending training at Federal Aviation Administration (FAA) Academy. In Ard T. Johnson, B-194372, Jan. 8, 1980, GAO held that employees in identical situations must be authorized POV as advantageous to Govt., notwithstanding that they are not covered by FASTA/NAGE agreement. Air traffic control trainees seek same benefit under Johnson decision. However, situation of air traffic control trainees is not identical to that of members of FASTA/NAGE bargaining unit since former do not perform training on recurring basis. Accordingly, we will not disturb FAA determination that travel by air traffic control trainees is not advantageous to Govt.

FAA issued Notice stating that under certain conditions employees who travel to FAA Academy for training may have travel by privately owned vehicle (POV) authorized as advantageous to Govt. One condition requires that class must be attended by trainees who are airway facili-

ties technicians subject to frequent assignment to recurring training. Whether training session is attended by certain class of employees has no bearing on whether travel by POV is advantageous to Govt. Accordingly, that condition should be stricken from Notice.

B-204015 Sept. 18, 1981

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

IRS employee requests reimbursement of \$630 fee charged at settlement claiming same represents closing costs. Truth-in-lending statement given at settlement indicates that \$630 loan closing fee was prepaid finance charge. Reimbursement is proscribed by FTR para. 2-6.2d, which prohibits reimbursement of all costs found to be finance charge under Reg. Z, 12 C.F.R. 226.4(2).

B-198887 Sept. 21, 1981

*SUBSISTENCE--PER DIEM--ADMINISTRATIVE DETERMINATION TO
PROVIDE--DISCRETIONARY*

Two Air Force employees claim mileage and per diem expenses for assignment at site 23 miles from their administratively designated permanent duty station. If assignment to different work site is permanent change of station assignment, then employees are not entitled to commuting expenses. Duration of assignment is one factor to be used in determining whether assignment was temporary duty or permanent change of station. Here assignment for 2 months was temporary duty, but assignment for 2 years and 9 months was permanent change of station. It is within agency's discretion to authorize reimbursement for mileage where employee is on temporary duty assignment near permanent duty station.

SUBSISTENCE--PER DIEM--MEALS--ADDITIONAL EXPENSE

Employee who worked as firefighter, claims per diem expenses of \$16 for meals consumed while on temporary duty assignment near permanent duty station. Under 2 JTR para. C4550-b.4 per diem allowance will not be authorized under these circumstances unless employee

incurs additional subsistence expenses. If same system prevails at both permanent and temporary duty stations, with firefighters bringing food with them for meals eaten during duty hours, then it would appear that employee did not incur additional expenses. Therefore, he is not entitled to per diem allowance.

B-201252, et al. Sept. 22, 1981

CLAIMS--EVIDENCE TO SUPPORT--BEST EVIDENCE AVAILABLE--ACCEPTABILITY

In absence of official records, claims of Army employees for overtime pay may be paid under best available evidence rule to extent that work schedules substantiate employees' claims.

B-201418 Sept. 22, 1981

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

Employee may not be reimbursed for temporary quarters subsistence expenses for period beginning July 17, 1979, where family departed residence in Dallas, Texas, on that date to travel to new duty station in Tyler, Texas, and subsequently reoccupied Dallas residence on Aug. 22, 1979. Para. 2-5.2c of FTR requires that employee's former residence be vacated as condition of entitlement to temporary quarters subsistence expenses. Employee has not provided sufficient evidence to establish that his family intended to vacate residence on July 17, 1979.

B-203926 Sept. 22, 1981

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

Employee of Dept. of Navy, WG-7, claims retroactive temporary promotion for having performed WG-8 duties. Under Turner-Caldwell decisions, employee must establish that he performed full range of duties of higher level position before he is eligible for retroactive promotion and backpay. Since employee claims to have performed only some higher-grade duties, claim is denied.

B-198768 Sept. 24, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
TRANSPORTATION FOR HOUSE HUNTING--MILEAGE

GAO employee requests reimbursement for househunting trip at rate of 15 cents per mile instead of 8 cents per mile rate paid on his claim. Although employee could reasonably have interpreted his travel order as authorizing higher rate, that by itself, does not entitle him to higher rate. Record clearly indicates that GAO did not consider househunting trip as falling within category of trips that may be reimbursed at 15 cents per mile rate under FTRs.

B-198260 Sept. 29, 1981

COMPENSATION--NIGHT WORK--REGULARLY SCHEDULED NIGHT DUTY--
ABSENCE OF FIXED-HOURS-OF-WORK PATTERN OF DUTY

Army White Sands Missile Range often assigns General Schedule employees to "variable tour" when hours of work will change frequently. While assigned to "variable tour," employee frequently performs overtime and night-work. White Sands considers any overtime involved to be "regularly scheduled," but it considers night differential to be "regularly scheduled" only when employee works two or more periods of nightwork in a week. Under circumstances we hold that any nightwork performed during variable tour is also "regularly scheduled," since it occurs with same frequency or "regularity" as does overtime worked by employee.

B-198762 Sept. 29, 1981

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

Employee was appointed in June 1973 and was granted quality step increase to GS-14, step 4, on March 29, 1976. He was erroneously granted within-grade increase to step 5 on June 7, 1976, which resulted in overpayments of pay of \$942.40 before error was corrected effective June 6, 1977. Since employee received payroll change slip in October 1976, effective October 11, 1976, which showed his grade as GS-14,

step 4; he then knew or should have known of error in computation of his pay and he should have made inquiry. Waiver of overpayment is therefore granted for period June 7 through October 10, 1976, but denied for period subsequent to that date.

B-199806 Sept. 29, 1981

COMPENSATION--RATES--HIGHEST PREVIOUS RATE--ADMINISTRATIVE DISCRETION

Agricultural Stabilization and Conservation Service county committee employee (a nonfederal position) was separated in reduction in force during 1975. Upon appointment with Forest Service in 1978 salary was erroneously computed by using highest previous rate earned with county committee. Employee appeals correction of error. Appeal must be denied since permissive language of 5 U.S.C. 5334(e) vests in agency discretion as to use of highest previous rate. Agency regulations state that rate may only be used where there is no break in service.

LEAVES OF ABSENCE--SICK--REREDIT OF PRIOR LEAVE--BREAK IN SERVICE

Agricultural Stabilization and Conservation Service county committee employee who was separated during 1975 and subsequently received appointment with Forest Service in 1978 after 3-year break in service seeks to have her unused sick leave recredited. She was properly denied credit for unused sick leave. Under 5 U.S.C. 6312 county committee employee may have leave balances transferred under 5 U.S.C. 6308. That section authorizes credit for unused leave balances only where employee transfers between positions under different leave systems without break in service.

B-200083 Sept. 29, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--REAL ESTATE EXPENSES--RELEASE FROM LIABILITY

Transferred employee sold old residence in Dearborn, Michigan, and buyer assumed mortgage. He arranged to purchase new residence in Cleveland, Ohio, but lender

in Cleveland required employee to obtain release from liability on Dearborn residence before loan would be granted. Since employee did not obtain release as personal preference for own protection, and release was prerequisite to obtaining financing on Cleveland residence, customarily paid by purchaser, he is entitled to reimbursement of charge of \$200 assessed for processing release from liability.

B-200207 Sept. 29, 1981

*OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--
ATTORNEY FEES--SINGLE FEE--CUSTOMARY CHARGES IN LOCALITY OF
RESIDENCE TRANSACTION*

Agency denied employee's claim for reimbursement of attorney fees on sale of residence since fees were excessive because employee sold his residence by "land sale contract" whereby purchaser takes equitable title in exchange for installment payments and seller retains legal title as security. We have held that expenses incurred incident to land sale contracts are reimbursable as long as fees are within customary range for such services. However, HUD area office advised us that fees claimed were excessive for similar services rendered in that locality and therefore employee should only be reimbursed within customary range of fees.

B-200742 Sept. 29, 1981

COMPENSATION--DOWNGRADING--SAVED COMPENSATION--ENTITLEMENT

Employee who applied for and accepted lower-grade position in effect requested demotion, thereby disqualifying herself from retained pay under 5 U.S.C. 5337 (1970). She did not meet her burden of establishing her claim with evidence that her demotion was initiated by her agency because it was primarily for benefit of agency to meet special recruitment need or was part of formal, systematic employee development program involving training to upgrade agency's work force.

B-201344 Sept. 29, 1981

*STORAGE--HOUSEHOLD EFFECTS--OVERSEAS EMPLOYEES--NONTEMPORARY--
STORAGE BY RELATIVE OF EMPLOYEE*

Employee of VA was transferred from New Hampshire to Philippines. He was authorized to store goods and he stored them in house owned by his parents. Record discloses no contract between VA and parents for storage. Under Foreign Service Reg. 171 contained in Vol. 6 of FAM, which is applicable to VA employees assigned to Philippines Offices, VA assumes no obligation nor undertakes any services with respect to effects not in storage under contract between VA and Storage firm. Claim is disallowed.

B-201453 Sept. 29, 1981

*OFFICERS AND EMPLOYEES--REEMPLOYMENT OR REINSTATEMENT--
TRAVEL AND TRANSPORTATION EXPENSES*

Former employee of IRS reemployed by agency within 1 year at different geographical location was erroneously authorized transportation expenses and Govt. paid costs of transporting employee's household goods to new duty station. Employee must repay amount erroneously paid since at time of reemployment he was not employee of Fed. agency; he was not separated from IRS by reason of reduction in force or transfer of function under 5 U.S.C. 5724a (1976); he was not appointee to manpower shortage position under 5 U.S.C. 5723 (1976); overpayments of travel and transportation expenses may not be waived under 5 U.S.C. 5584 (1976); and Govt. is not estopped from repudiating erroneous authorization and advice of its agents.

B-202318 Sept. 29, 1981

*COMPENSATION--REMOVALS, SUSPENSIONS, etc.--BACKPAY--BACK PAY
ACT OF 1966--UNJUSTIFIED OR UNWARRANTED REMOVAL REQUIREMENT*

Employee claims backpay under 5 U.S.C. 5596 following Civil Service Commission's grant of variance of civil service regulations to correct inequitable situation and permit her reinstatement to position after her previous separation, which had been required by Com-

mission due to improper appointment. Action by Commission did not constitute determination that employee had undergone unwarranted or unjustified personnel action; therefore, claim is denied.

B-202400 Sept. 29, 1981

MEALS--HEADQUARTERS

Senior official of Treasury seeks reimbursement for cost of annual luncheon sponsored by OPM for Federal Labor Relations community. Although luncheon included labor relations speaker, it was not meal incident to meeting for which reimbursement may be allowed. General rule against reimbursement for meals at employee's official duty station applies.

B-202594 Sept. 29, 1981

OFFICERS AND EMPLOYEES--TRANSFERS--RELOCATION EXPENSES--REAL ESTATE EXPENSES--WAREHOUSING FEE

Employee may not be reimbursed for warehousing fee charged by mortgage company in connection with sale of his residence upon transfer. Warehousing fee is mortgage discount charged to seller to defray cost to mortgage company of carrying loan until it is sold to permanent investor. Applicable regulation specifically prohibits reimbursement of mortgage discounts.

B-203458 Sept. 29, 1981

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

Employee elected to enroll in high option (family plan) health benefits plan in June 1968. Incident to transfer and promotion action in July 1969, and thereafter until November 1978, when employee discovered and reported error, agency erroneously made payroll deductions for health benefits coverage at self-only rate. Request for waiver pursuant to 5 U.S.C. 5584 for debt resulting from erroneous under-deductions is denied since employee is not free from fault by failing to verify correctness of compensation as indicated on earnings statement furnished to him by employing agency. It is not inequitable to require payment because employee was entitled to health services at high option level during period of claim.

B-199643 Sept. 30, 1981
TRAVEL EXPENSES--OVERSEAS EMPLOYEES--RENEWAL AGREEMENT TRAVEL

Department of Army has proposed change of JTR, Volume 2, which would allow employees on 36-month overseas tours to take renewal travel within 1-year time frame; i.e., 6 months before through 6 months after completion of 36-month tour provided that renewal agreement is for duty in 36-month or 24-month tour area. We find no statutory or regulatory bar to proposed flexibility in length of overseas tours of duty, for purpose of renewal travel expenses.

B-200300 Sept. 30, 1981
CLAIMS--EVIDENCE TO SUPPORT--BURDEN OF PROOF--CLAIMANT'S RESPONSIBILITY

GS 12 Design Engineer alleges that he was detailed to GS-13, Project Engineer position and claims retroactive temporary promotion and backpay under Everett Turner and David L. Caldwell, 56 Comp. Gen. 427 (1977). Employee's supervisor indicated that technical requirements of both positions were quite similar, but that GS-13 position required less supervision and control. Supervisor also stated that employee's work required detailed review. Where difference in positions lies in complexity of duties of higher-grade position, employee may not prevail by showing that in addition to doing type of work required under both position descriptions he also performed some of duties of higher-grade position.

GS-12 Design Engineer alleges that he was detailed to GS-13, Project Engineer position, and claims retroactive temporary promotion and backpay under Everett Turner and David L. Caldwell, 56 Comp. Gen. 427 (1977). In view of agency's report that employee did not perform all of duties of GS-13 position, Performance Evaluation and Rating submitted by employee which states that he had "been satisfactorily doing" GS-13 level tasks merely implies that he performed some higher-level duties in addition to duties of his regular position. It is not sufficient to prove that he was temporarily detailed to higher level position itself.

B-203868 Sept. 30, 1981

DEBT COLLECTIONS--WAIVER--CIVILIAN EMPLOYEES--COMPENSATION,
OVERPAYMENTS--EMPLOYEE STATUS

Employee continued to receive same gross salary for 9 pay periods after termination of temporary promotion. Standard Form 50 gave notice of temporary promotion termination date. Since employee was also furnished Leave and Earnings Statements enabling him to verify correctness of his pay, overpayments may not be waived since he was at least partially at fault in failing to promptly examine records and report error. Financial hardship cannot form basis for waiver when other circumstances preclude such action.

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