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UNITED STATES GENERAL ACCOUNTING OFFICE

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April through June 1984

Contents

	<u>Page</u>
Table of Decisions	I
Digests:	
Civilian Personnel	A-1
Military Personnel	B-1
Index	i

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

TABLE OF DECISIONS

April through June 1984

		<u>Page</u>			<u>Page</u>
B-193584	May	1... A-8	B-213705	June	18...A-20
B-202370	Apr.	2... A-1	B-213730	Apr.	17... A-6
B-204286	June	12...A-19	B-213769	May	1... A-8
B-205373	Apr.	24... A-7	B-213786	May	18...A-13
B-206546	Apr.	3... A-2	B-213806	May	16...A-12
B-207676	May	7... A-9	B-213807	May	10...A-10
B-208715	May	10...A-10	B-213816	May	22...A-13
B-209349	Apr.	9... A-4	B-213827	Apr.	2... A-2
B-209957	June	1...A-17	B-213833	May	29...A-15
B-210065	Apr.	2... A-1	B-213849	May	14...A-10
B-210657	May	25...A-14	B-213855	May	31...A-16
B-210859	Apr.	19... A-7	B-213861	May	21...A-13
B-210918	June	12...A-19	B-213931	June	21...A-20
B-211784	May	1... A-8	B-213970	Apr.	4... A-4
B-212362	June	28...A-21	B-214066	June	11...A-18
B-212401	Apr.	3... A-3	B-214117	June	26...A-21
B-212487	Apr.	17... A-6	B-214118	June	1... B-4
B-212581	May	16...A-11	B-214156	May	29...A-16
B-212833	June	4...A-17	B-214244	May	22...A-14
B-212921	May	30...A-16	B-214256	June	28...A-22
B-213021	May	2... A-9	B-214277	June	25...A-20
B-213238	May	9... B-2	B-214321	Apr.	10... A-5
B-213498	May	14... B-2	B-214361	May	22... B-3
B-213560	Apr.	3... B-1	B-214383	May	8...A-10
B-213594	June	28...A-22	B-214701	June	4...A-18
B-213604	May	15...A-11	B-214719	June	25...A-21
B-213658	June	26... B-4	B-214770	May	14... B-2
B-213660	May	3... B-1	B-214881	May	15...A-11
B-213690	Apr.	16... A-5	B-214932	May	29... B-3
B-213696	Apr.	10... B-1	B-215273	June	28...A-23
B-213697	Apr.	16... A-6			

DECISIONS OVERRULED OR MODIFIED

B-194880, Jan. 9, 1980, modified in part by
 B-212837, Mar. 26, 1984

April through June 1984

B-202370 Apr. 2, 1984

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

A Navy employee claims mileage for travel from home to work. As part of his assigned duties as a handler of a Drug Detection Dog, he transports it in his privately-owned automobile between his residence and permanent duty station. He claims mileage on the basis that his commuting expenses increased by the requirement to transport the dog because he was deprived of cost advantages of public transportation or carpooling. Disallowance of the claim is sustained, because employees must bear the cost of transportation between their residence and duty station absent statutory or regulatory authority to the contrary.

B-210065 Apr. 2, 1984

*COMPENSATION--OVERTIME--TRAVELTIME--ADMINISTRATIVELY
CONTROLLABLE*

An NLRB Field Examiner in a travel status claims compensatory time for after-hours return travel incident to a hearing conducted away from her duty station. Basis for claim is assertion that the hearing's late start was an uncontrollable event and supervisor's request to continue hearing late to complete record established the immediate official necessity under 5 U.S.C. 5542(b)(2)(B)(iv). Claim is denied. While delays in the field may prevent an employee from performing return travel during normal working hours, such delays do not qualify as an uncontrollable event which requires after-hours travel as a matter of official necessity under those provisions. Employee is then merely returning to duty station with no special urgency requiring that travel.

An NLRB Field Examiner in a travel status in one case, claims compensatory time under 5 U.S.C. 5542(b)(2)(B)(iv) for after-hours travel to meet an essential witness in a second case, who was to be interviewed that

evening. Claim is denied. The after-hours travel did not qualify as an administratively uncontrollable event since it was set by mutual agreement and could have been arranged for a later date.

B-213827 April 2, 1984

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

An employee was transferred from Seattle, Washington, to Juneau, Alaska, and after a brief occupancy of a hotel room, he rented and moved into a house on which he had placed an earnest money deposit. The employee may not be reimbursed for temporary quarters subsistence expenses even though he alleges he was forced to rent the house, which was unfinished, because no other lodgings were available, and even though the rental of the house was less costly than rental of a hotel room. The record does not reveal the employee intended to occupy the house on other than a permanent basis and, therefore, the house does not qualify as temporary quarters.

B-206546 Apr. 3, 1984

*MILEAGE--TRAVEL BY PRIVATELY OWNED AUTOMOBILE--INCIDENT
TO TRANSFER--MILEAGE RATES*

Employee and spouse were authorized use of privately owned vehicles for relocation travel. In the absence of an explanation for the mileage claimed in excess of that shown on standard highway mileage guides, the claim for 31 miles by the employee, and 43 miles by his spouse should be disallowed.

*OFFICERS AND EMPLOYEES--TRANSFERS--MISCELLANEOUS EXPENSES--
LOST OR DAMAGED PERSONAL PROPERTY*

Employee's claim for loss or damage to his personal property during the course of relocation are for resolution by the employing agency, and we have no jurisdiction. 31 U.S.C. 3721(b) and (k).

B-206546 Apr. 3, 1984 - Con.

*OFFICERS AND EMPLOYEES--TRANSFERS--TEMPORARY QUARTERS--
SUBSISTENCE EXPENSES--ENTITLEMENT--ADMINISTRATIVE
DISCRETION*

Employee was authorized 30 days Temporary Quarters Subsistence Expense (TQSE), less a househunting trip of 6 days for him and his spouse. The claim of the employee's spouse for 6 days' househunting was paid and no claim for TQSE on her behalf was submitted. The agency deducted the 6 days' househunting paid on behalf of the employee's spouse from the employee's 30 days of TQSE and allowed him only 24 days of TQSE. Employee's claim for househunting was properly denied, since these are discretionary items and the agency interpretation of the regulations and travel orders is not unreasonable.

*OFFICERS AND EMPLOYEES--TRANSFERS--TEMPORARY QUARTERS--
SUBSISTENCE EXPENSES--ENTITLEMENT--WHILE HOUSEHUNTING*

Where temporary quarters subsistence expense (TQSE) payments would not be duplicative of payments made for househunting trips, an employee may continue to receive TQSE while househunting since this could not be viewed as an unwarranted extension of temporary quarters.

SUBSISTENCE--PER DIEM--FRACTIONAL DAYS--COMPUTATION

An employee who performs temporary duty travel during a period of TQSE may elect to receive a fractional per diem rate for fractional days of temporary duty travel and have the period of TQSE extended accordingly. 57 Comp. Gen. 700 (1978).

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

Employee's claim for the higher per diem rate authorized on his travel orders is denied. Since the agency had established a lower rate, there is no authority for allowing reimbursement based on the higher rate.

B-212401 Apr. 3, 1984

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

An employee of the Immigration and Naturalization Service

on temporary duty may not be reimbursed based on the per diem rate and automobile rental expenses provided in his travel order because the Service in effect established a special lower per diem rate predicated upon a requirement that the employee use government quarters at the temporary duty location and which would not require use of a rental automobile. Although 5 U.S.C. 5911(e) precludes an employee from being subjected to that requirement unless the agency determines it to be necessary for the accomplishment of the employee's mission, the Service made such a determination in this case based on the needs of the Service in processing 800 Haitians at Fort Allen, Puerto Rico.

B-213970 Apr. 4, 1984

SUBSISTENCE--PER DIEM--HEADQUARTERS--PROHIBITION AGAINST PAYMENT

National Park Service employee stationed at Voyageurs National Park incurred meal expenses while accompanying a tourism official of a foreign government on a tour through the park. Absent specific statutory authority, employee is not entitled to subsistence or per diem at official duty station regardless of any unusual working conditions.

National Park Service may designate a subdivision of a large park that is not within the corporate limits of a city or town as an employee's official duty station where the employee's duties are generally focused in the subdivision rather than the entire park. However, the official duty station of a Park Service employee working in a park within a city's or town's corporate limits is the city or town in which the park is located. Federal Travel Regulations, FPMR 101-7 (September 1981), para. 1-1.3c(1).

B-209349 Apr. 9, 1984

COMPENSATION--REMOVALS, SUSPENSIONS, ETC.--DEDUCTIONS FROM BACKPAY--SEVERANCE PAY

Two Department of Army employees were erroneously separated from permanent fulltime positions and later reinstated with backpay under 5 U.S.C. 5596 in intermittent posi-

tions as ordered by Merit Systems Protection Board. The Agency properly deducted from the employees' backpay awards the amounts which they had received as severance pay. Furthermore, they are not entitled to severance pay incident to their subsequent separations from the intermittent positions since severance pay entitlement only extends to employees with regularly prescheduled tours of duty.

B-214321 Apr. 10, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
TIME LIMITATION*

Even though seller of a residence incident to a transfer was misinformed by his agency's officials that a sales agreement and receipt of earnest money was equivalent to a "settlement" under subpara. 2-6.1e of the Federal Travel Regulations, the employee may not be reimbursed the real estate expenses of the sale because the actual "settlement" occurred more than 3 years after the employee reported for duty at his new station. It is suggested to the Administrator of the General Services Administration that he consider the amendment of subpara. 2-6.1e to include the term "closing" with the term "settlement" that is already there.

B-213690 Apr. 16, 1984

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

Veterans Administration employee's claim for backpay for period of suspension incident to arrest on criminal charges is denied. Although charges were eventually dismissed, agency's indefinite suspension had been affirmed by final order of the Merit Systems Protection Board. Since there has been no finding under Back Pay Act (5 U.S.C. 5596) by appropriate authority that suspension was unjustified or unwarranted, and since this Office will not review decisions and orders of MSPB, there is no legal basis to consider claim for backpay.

B-213697 Apr. 16, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--EFFECTIVE DATE--
EXPENSES INCIDENT TO CHANGE*

An employee's permanent change-of-station travel orders designated his reporting date at his new duty station as "on or about September 26, 1982," but the employee delayed reporting until October 4, 1982, because he was authorized annual leave. He is entitled to increased relocation benefits effective for employees who report to their new duty stations on or after October 1, 1982, since the actual rather than designated reporting date governs the effective date of the increases.

B-212487 Apr. 17, 1984

CLAIMS--DENIAL--ENTITLEMENT BASIS LACKING

An employee subject to an Inspector General investigation, caused by a third party, may not be reimbursed charges he incurred for microfilming and research of his banking records after he produced the records at the Inspector General's request. There is no authority for reimbursement of the expenses that were voluntarily incurred, and for which there was no obligation to incur. Moreover, attorney's fees incurred by the employee may not be paid since the agency, having decided to investigate the employee, did not have a common interest with him.

B-213730 Apr. 17, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
PERMANENT CHANGE OF DUTY STATION REQUIREMENT*

An employee stationed in Puerto Rico was authorized to make an early return to his home in the United States for retirement. His travel authorization erroneously authorized him to incur relocation expenses. Employee seeks reimbursement of these expenses under 5 U.S.C. 5724 and 5724a. The claim is denied since those provisions apply only to employees who are transferred between duty stations to perform permanent duty at new station. Travel rights of employees returning to continental United States are contained in 5 U.S.C. 5722

and FTR para. 2-1.5g(2)(b), which do not permit reimbursement of any of the expense items claimed. Since employee's travel rights are strictly governed by law, the Government cannot be bound by errors made in a travel authorization.

B-210859 Apr. 19, 1984

*CIVIL SERVICE REFORM ACT OF 1978--MERIT PAY SYSTEM
EFFECTIVE DATE OF PAY INCREASES*

An employee's position under the General Schedule was to be converted to Merit Pay in October 1981. However, in September 1981, his position was removed from those to be converted to Merit Pay. This occurred after the employee's rating period had concluded resulting in a rating of "highly successful" which would have qualified him for a merit pay increase. Since the employee's position was not converted to merit pay and he was not under merit pay when the merit pay increases were awarded in October 1981, the agency denied his merit pay increase. We hold that the employee is not entitled to the merit pay increase since his position was not converted to merit pay and he was not under the merit pay program when the increases were awarded as required by applicable regulations.

B-205373 Apr. 24, 1984

ATTORNEYS--FEES--CLAIMS--STATUTORY AUTHORITY ABSENCE

Employee claims attorney fees in case where GAO held agency improperly attempted to set off retirement contributions against indebtedness to Government which was discharged in bankruptcy. Leland M. Wilson, B-205373, April 2, 1982. Claim for attorney fees is denied since original claim is not within scope of Back Pay Act, 5 U.S.C. 5596, as amended, and there is no other basis for payment of attorney fees.

*INTEREST--CLAIMS AGAINST THE UNITED STATES--FEDERAL
EMPLOYEES*

Employee claims interest for period agency improperly withheld payment of retirement contributions in an attempt to collect an indebtedness to the agency. Absent

statutory or contractual authority, there is no basis to assess interest against the Government.

B-193584 May 1, 1984

COMPENSATION--BOARDS, COMMITTEES, AND COMMISSIONS--LAND COMMISSIONERS--HOURLY RATE

Land commissioners appointed by the Federal District Courts pursuant to Rule 71A(h) of the Federal Rules of Civil Procedure and paid at daily rates not to exceed the highest rate payable under the General Schedule are not limited in the amount they may be paid on a biweekly basis. They are, however, subject to the maximum annual limitation which prohibits payment of compensation in excess of that allowable in level V of the Executive Schedule.

B-211784 May 1, 1984

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

Eight employees whose promotions were delayed due to a clerical error which occurred prior to approval of the promotion request by the authorized official may be retroactively promoted because of failure to carry out a nondiscretionary agency policy. Although not committed to writing, there was an established nondiscretionary agency policy to promote entry level plant protection and quarantine officers on their earliest eligibility date. This policy was implemented by established procedures, and was routinely communicated to affected employees. The agency's failure to carry out its nondiscretionary policy was an unjustified or unwarranted personnel action under the Back Pay Act, 5 U.S.C. 5596 (1982)

B-213769 May 1, 1984

OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--LOT SALE--INTEGRATED DWELLING OR MOBILE HOME USE REQUIREMENT

Employee claims reimbursement of real estate expenses for purchase or sale of a lot incident to his transfer. He was not able to finish construction of a residence

on the lot prior to his transfer. His claim is denied since real estate expenses are payable only for the sale or purchase of a lot integrated with a dwelling or used for a mobile home in accordance with paragraph 2-6.1 of the Federal Travel Regulations, and he did not live in a residence on the lot when he was first notified of his transfer.

B-213021 May 2, 1984

SUBSISTENCE--ACTUAL EXPENSES--HIGH RATE AREA--ENTITLEMENT

A Customs Service employee on temporary duty, in an actual subsistence expense status with a high rate geographical entitlement of \$75.00, claimed meal expenses of \$50.00 or more per day. Customs Service determined that these meal claims were exorbitant, based on agency guidelines requiring the claim for meal costs to be reasonable and the "Sales Marketing Management Survey of Selling Costs." The agency denial is upheld since there is no evidence that its guidelines were arbitrary and capricious or that the employee was required to spend more than the guidelines permitted due to unusual circumstances.

B-207676 May 7, 1984

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

Incident to implementing a Foreign Service Grievance Board decision ordering the recomputation of a retired foreign service officer's annuity the Comptroller General advised the employing office to fix a retroactively effective retirement date and treat the employee as a reemployed annuitant until the date he in fact retired. Taking the actions directed resulted in the employee's being granted sick leave in excess of the amount to his credit. Waiver of the debt for pay received during use of excess sick leave is granted under 5 U.S.C. 5584 since the change in the retirement date made the grant of this sick leave erroneous and there is no indication that the individual was at fault in the matter.

B-214383 May 8, 1984

FEEES--PARKING--PRIVATELY OWNED VEHICLE--TEMPORARY DUTY

Employee may not be reimbursed for the cost of a monthly parking permit which he was unable to use near his permanent duty station because of a temporary duty (TDY) assignment in another locale. Such a cost is a personal expense and there is no basis upon which it would become a Government obligation upon the assignment of an employee to TDY.

B-208715 May 10, 1984

COMPENSATION--PANAMA CANAL EMPLOYMENT SYSTEM--PANAMA CANAL EMPLOYMENT SYSTEM v. COMPETITIVE CIVIL SERVICE

Employees of Department of Defense (DOD) in Panama claim higher pay based on General Schedule rates. Decision of DOD to adopt lower-paying Panama Area Wage Base for U.S. employees in Panama is authorized under Panama Canal Act of 1979. Claim is denied since these employees have no entitlement to pay based on General Schedule rates.

B-213807 May 10, 1984

OFFICERS AND EMPLOYEES--TRANSFERS--GOVERNMENT v. EMPLOYEE INTEREST--RELOCATION EXPENSE REIMBURSEMENT--ADMINISTRATIVE DETERMINATION--FINALITY

An employee who was transferred without authorization for reimbursement of relocation expenses claims entitlement to reimbursement on the grounds that his transfer was in the interest of the Government. The employing agency determined that the transfer was primarily for his convenience since it was at his request. Since the record does not indicate that the determination was arbitrary or capricious, GAO will not disturb it.

B-213849 May 14, 1984

LEAVES OF ABSENCE--FORFEITURE--SCHEDULING REQUIREMENT

An employee who transferred from the Social Security Administration (SSA) to the Department of Labor was erroneously given a lump sum leave payment. He returned the payment, but his leave balance from SSA was not credited to

his account until 2 years later. Even though it was an error not to have promptly credited the annual leave upon his transfer, since the employee had sufficient time to schedule and use the excess leave after it was credited, he may not be reccredited with the leave which he forfeited at the end of the leave year. Distinguishes 59 Comp. Gen. 335.

B-213604 May 15, 1984

*LEAVES OF ABSENCE--SICK--RECREDIT OF PRIOR LEAVE--
RESTORATION AFTER UNJUSTIFIED REMOVAL*

A U.S. District Court found that an employee had been removed from his position with the Defense Mapping Agency (DMA) in violation of the Equal Employment Opportunity Act of 1972. The court ordered the DMA to reinstate the employee with backpay. We hold that the employee is entitled to restoration of the annual leave and the sick leave he would have earned during the period of his discriminatory separation as an element of backpay.

B-214881 May 15, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--GOVERNMENT v. EMPLOYEE
INTEREST--RELOCATION EXPENSE REIMBURSEMENT--ADMINISTRATIVE
DETERMINATION--FINALITY*

Employee who transferred to a position having the same title, grade, and promotion potential is not entitled to moving expenses since the employing agency properly determined that she transferred for her own benefit and not primarily in the interest of the Government.

B-212581 May 16, 1984

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

Responsible agency official determined on January 8, 1982, that General Schedule employee of Forest Service was entitled to pay adjustment under 5 U.S.C. 5333(b) as supervisor of wage system employee with higher pay rate. Employee may not be granted retroactive pay prior to official determination since entitlement to pay ad-

justment is within discretion of agency, and, absent mandatory agency policy, failure to grant pay adjustment does not constitute abuse of discretion which warrants compensation.

B-212581 May 16, 1984

COMPENSATION--INCREASES--EFFECTIVE DATE--"BEGINNING OF FIRST PAY PERIOD AFTER"

Responsible agency official determined on January 8, 1982, that General Schedule employee of Forest Service was entitled to pay adjustment under 5 U.S.C. 5333(b). Under 5 C.F.R. 531.305(c), the adjustment is effective on the first day of the first pay period following the date on which the agency determines to make the adjustment. Since there was no mandatory agency policy to make the adjustment, and no abuse of discretion which warrants retroactive compensation, agency official erred in granting employee retroactive pay adjustment to February 8, 1981, to coincide with date employee certified his position description was not accurate.

B-213806 May 16, 1984

TRANSPORTATION--AUTOMOBILES--FOREIGN MAKE--TRAVEL EXPENSES INCIDENT TO SHIPMENT

State Department employee purchased a foreign-made vehicle in 1978 during tour of duty in Leningrad, Russia. At that time, Leningrad was not one of the posts of duty granted an exception to the restriction on the shipment of a foreign-made, foreign-purchased vehicle to the United States at Government expense. 6 FAM 165.9-2. In 1980, claimant transferred from Leningrad to Copenhagen, Denmark, and his vehicle was shipped at Government expense. Leningrad was added to the list of posts granted exceptions in 1982, but employee's vehicle does not qualify for shipment to the United States since Leningrad was not added to list of excepted posts until after his transfer to Copenhagen and Copenhagen is not on such list. Travel authorization may not be amended to authorize shipment.

B-213786 May 18, 1984

OFFICERS AND EMPLOYEES--DIRECTOR, INSTITUTE OF MUSEUM SERVICES--COMPENSATION

Section 205 of Public Law 94-462, 20 U.S.C. 964 (1982), provides that the Director, Institute of Museum Services, will be compensated at the rate provided for Executive Level V positions. However, each Appropriation Act funding the institute since it was created in 1976 has prohibited the use of its funds to compensate Executive Level V or higher positions. We hold that the appropriations restriction does not apply to the Institute Director's position. Statutes in apparent conflict are to be harmonized whenever possible. Executive Level V positions are only those listed in 5 U.S.C. 5316 or established by the President under 5 U.S.C. 5317. Since the Institute Director's position is on neither list, it is not an Executive Level V position and the statutes are deemed harmonious. Therefore, the Director may be paid at rate of \$63,800 annually, effective December 17, 1982, and \$66,400 annually, effective in January 1984.

B-213861 May 21, 1984

OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--HOUSE TITLE IN MORE THAN ONE PERSON--PRO RATA EXPENSE REIMBURSEMENT

Transferred employee claims reimbursement for expenses incurred incident to the sale of a residence at his old duty station. Title to that residence was in the name of employee's wife and her former husband, but employee and his wife resided in the house and she received all of the proceeds of the sale. Employee may be reimbursed for expenses of sale to the extent of his wife's interest in the residence, in this case 50 percent.

B-213816 May 22, 1984

SUBSISTENCE--PER DIEM--TEMPORARY DUTY--AT PERMANENT POST

Two employees were assigned to perform duty 30 miles from their duty station for a 2-week period. The employees claimed actual subsistence expenses and mileage

as prescribed in their travel orders. The agency denied subsistence reimbursement since the agency considered the assignment to be local travel. We hold that payment may be allowed where subsistence expenses and mileage were properly authorized and were not specifically precluded by agency regulations defining the local travel area.

B-214244 May 22, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--SERVICE AGREEMENTS--
FAILURE TO EXECUTE--EFFECT ON LIABILITY*

An employee received a permanent change-of-station transfer in the interest of the Government. He completed the transfer, but due to a dispute regarding the nature of the transfer, refused to execute a service agreement. The agency thereafter refused to issue him a travel authorization and would not approve payment of the relocation expenses he incurred. The employee remained with agency at the new duty station for more than 3 years following the transfer. The claim for relocation expense reimbursement is allowed. While 5 U.S.C. 5724(i) requires the execution of a 12-month service agreement at the time of a permanent change of station, that requirement is not absolute where the facts show that the employee did in fact perform the minimum required service following the transfer.
Cathryn P. White, B-195180, October 24, 1979.

B-210657 May 25, 1984

*OFFICERS AND EMPLOYEES--NEW APPOINTMENTS--RELOCATION
EXPENSE REIMBURSEMENT AND ALLOWANCES--NON-ENTITLEMENT--
NATIONAL CREDIT UNION ADMINISTRATION CHAIRMAN*

The Chairman of the National Credit Union Administration (NCUA) was reimbursed for relocation expenses he incurred following his appointment to that position in 1981. Prior decision that Chairman was not entitled to such expenses is affirmed because: (1) at the time of the Chairman's appointment, there was no authority in 5 U.S.C. Chapter 57, Subchapter II, for payment of relocation expenses to Presidential appointees; (2) the

NCUA's operating fund constitutes an appropriated fund, subject to statutory restrictions on the use of such funds; (3) it is not material that the NCUA's Central Liquidity Facility (CLF) reimbursed NCUA for the Chairman's relocation expenses, since the Chairman is an employee of NCUA, not CLF; and (4) the Government cannot be bound by erroneous advice provided to the Chairman by NCUA officials.

B-213833 May 29, 1984

AGENTS--GOVERNMENT--GOVERNMENT LIABILITY FOR ACTS BEYOND AUTHORITY--ERRONEOUS INFORMATION

Even if wife of State Department employee was advised incorrectly by State Department travel officials, she is still responsible for the correct performance of official travel and for the payment of any charges through failure to comply with the governing regulations. This result is required by the regulation to that effect and by the general rule that the Government is not liable for the errors of its employees.

B-213833 May 29, 1984

TRAVEL EXPENSES--LOST OR STOLEN TICKETS

Wife of State Department employee was authorized travel for medical evacuation on a cost-constructive basis from Sophia, Bulgaria, to Washington, D.C., and a return trip by the same route. She lost excursion fare return trip ticket after arriving in Washington, D.C. After being advised to do so by State Department travel officials, she procured another ticket with a Government Travel Request (GTR), but without knowledge that it was at a higher rate. We hold that she may not be reimbursed by the State Department for the portion of return trip ticket for which she was not reimbursed by the foreign-flag carrier since a traveler is required to safeguard tickets and is liable for any costs or expenses that can reasonably be said to flow from the loss of a ticket.

B-214156 May 29, 1984

LEAVES OF ABSENCE--ADMINISTRATIVE LEAVE--ADMINISTRATIVE DETERMINATION--IN LIEU OF HOLIDAYS

Although part-time employees are not covered by 5 U.S.C. 6103(b) and Executive Order 11582 which authorize designated and in lieu of holidays for full-time employees when a holiday falls on a non-workday, agencies have discretion to grant part-time employees administrative leave for these holidays.

B-212921 May 30, 1984

OFFICERS AND EMPLOYEES--TRANSFERS--TEMPORARY QUARTERS--DRY CLEANING AND/OR LAUNDRY EXPENSES

A transferred employee reclaims that part of his subsistence expenses which were disallowed by the agency as unreasonable under the Federal Travel Regulations. The employee also reclaims laundry costs incurred because of son's allergy condition and disallowed as not part of temporary quarters allowance. The employing agency has the initial responsibility to determine the reasonableness of expenditures for lodging and subsistence claimed by employees while occupying temporary quarters. Where the agency has exercised that responsibility, GAO will not substitute its judgment for that of the agency in the absence of evidence that the agency's determination is clearly erroneous, arbitrary, or capricious.

B-213855 May 31, 1984

TRAVEL EXPENSES--OVERSEAS EMPLOYEES--TRANSFERS--AGENCY WITHIN U.S.

Forest Service employee in Alaska, who was entitled to travel and transportation costs to home of record as a result of completion of service agreement, transferred to the Department of the Treasury in Long Beach, California. Employee is entitled to reimbursement by the Forest Service for the costs of travel and transportation expenses to new station since he relocated before effective date of Treasury appointment. Reimbursement should be made to the extent that it does not exceed constructive costs of travel and transportation to home of record.

B-209957 June 1, 1984

*TRAVEL EXPENSES--AIR TRAVEL--CONSTRUCTIVE COST
REIMBURSEMENT--MILITARY AIRLIFT COMMAND SERVICE*

Employee of the Navy used a foreign air carrier on a particular routing for one leg of his return travel from temporary duty overseas even though he could have used Military Airlift Command (MAC) chartered air service on another routing to the United States. Since MAC full plane charter services need not be considered as available U.S. air carrier under the Fly America Act and since the employee's use of a foreign air carrier was justified in the usual manner using only available commercial flights, no penalty for using foreign air carrier was appropriate. However, under applicable regulation reimbursement for return travel is limited to the constructive MAC cost. Upon reconsideration since new evidence showed that a penalty had been assessed an appropriate payment may be allowed to reimburse the employee's costs up to constructive MAC cost.

B-212833 June 4, 1984

*COMPENSATION--RATES--HIGHEST PREVIOUS RATE--ADJUSTMENTS--
RETROACTIVE*

Employee, whose temporary position expired, contends improper agency delay in processing permanent appointment caused her to lose the benefits of the highest previous rate rule when she was reemployed at step 1 of her prior grade following break in service. Absent mandatory policy or administrative regulation on processing appointment, delay in processing prior to approval by authorized official does not constitute administrative error which supports retroactive step adjustment and backpay.

B-212833 June 4, 1984

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

Temporary civilian employee of the Air Force in grade GS-4, step 10, position was selected for a permanent position just prior to the expiration of her temporary appointment. Delays in processing the appointment resulted in a break in service of nearly 6 weeks, and the employee was reemployed following the service break at step 1 of grade GS-4. The employee claims Air Force personnel should have applied highest previous rate rule under 5 U.S.C. 5334 to appoint her at step 10. Absent mandatory policy or administrative regulation, use of highest previous rate is discretionary on agency's part. Authorized appointing official did not abuse discretion in setting pay at step 1 incident to reemployment after break in service.

B-214701 June 4, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
TIME LIMITATION--MANDATORY*

An employee who has not sold his residence at his old duty station is not entitled to reimbursement for real estate expenses which may be incurred in the sale of that residence in connection with his permanent change of station since the settlement, if it does occur, will not occur within 3 years of the date on which the employee reported to the new duty station, notwithstanding that the employee's inability to sell was due to market conditions. The regulations providing for the 3-year maximum period (initial 2 years plus a 1-year extension) may not be waived or modified by the agency or the Comptroller General.

B-214066 June 11, 1984

*GENERAL ACCOUNTING OFFICE--DECISIONS--HYPOTHETICAL,
ACADEMIC, ETC. QUESTIONS*

The General Accounting Office will not consider an agency's hypothetical question concerning the circumstances under which an employee will be indebted for home leave granted under 5 U.S.C. 6305(a) (1982). The question is deferred for future consideration in the context of a specific claim.

TRAVEL EXPENSES--OVERSEAS EMPLOYEES--HOME LEAVE--TRANSFERS

An employee who had been stationed in Montreal, Canada, for 2 years used home leave to perform renewal agreement travel. She then returned to her duty station in Montreal for approximately 18 months before transferring to a position in the United States. The employee is not indebted for home leave because she met the eligibility requirements set forth in 5 U.S.C. 6305(a) (1982), and she returned to duty in Montreal immediately following the period of home leave.

*TRAVEL EXPENSES--OVERSEAS EMPLOYEES--RENEWAL AGREEMENT
TRAVEL--REQUIREMENTS*

An employee who had been stationed in Montreal, Canada, for 2 years agreed to serve there for an additional

2-year period and performed renewal agreement travel under 5 U.S.C. 5728 (1982). After returning to her duty station in Montreal for approximately 18 months, the employee transferred to a position in the United States. Although the employee did not complete the agreed period of overseas service, she may retain renewal agreement travel expenses since she served for more than 1 year under the new agreement. See citations to paragraph 2-1.5h of the Federal Travel Regulations, FPMR 101-7 (September 1981).

B-204286 June 12, 1984

TRAVEL EXPENSES--OVERSEAS EMPLOYEES--RETURN FOR OTHER THAN LEAVE--SEPARATION--TIME LIMITATION ON TRAVEL

Although an employee separated in Panama must return to Guam, his actual place of residence, in order to qualify for separation travel and transportation under 5 U.S.C. 5722(a), if he does return to Guam he may be reimbursed for shipping his household goods to an alternate location in an amount not to exceed the cost of shipment to Guam. Where the employee claims to have traveled and shipped his household goods to Costa Rica to establish a residence for his daughter, the employee's 4-month stay in Costa Rica does not necessarily require the conclusion that he intended to establish his own residence in Costa Rica instead of Guam. The agency should determine whether he intended to return to Guam for the purpose of establishing his residence there and whether his case involved unusual extenuating circumstances that warranted a delay in his return to Guam beyond the 90-day period ordinarily required by agency regulations.

B-210918 June 12, 1984

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

A transferred employee sold a mobile home which he had been using as a residence at his old permanent station and seeks reimbursement for advertising and legal expenses incurred incident to the sale. Under FTR, para. 2-6.2b and 2-6.2c, reimbursement of these expenses are

authorized. Subject to recomputation, the employee's advertising expenses are allowed. However, not all the legal and related expenses charged employee may be allowed, since some were incurred after the date of closing for the sale. In absence of a showing that the additional legal expenses incurred after that date necessarily related to the sale, only those expenses which were incurred by the employee through the designated date of the closing may be allowed.

B-213705 June 18, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
ACTUAL RESIDENCE AT TIME OF OFFICIAL TRANSFER REQUIREMENT--
EXCEPTION*

Employee who owned a residence at his old duty station in Menlo Park, California, may be reimbursed the expenses of its sale incident to his transfer to Grants Pass, Oregon. Although he and his family were not residing in the house on the date he was first definitely informed of his transfer, they would have resided there, but for the fact that he was away from his old duty station for 11 months prior to the transfer on temporary duty assignments.

B-213931 June 21, 1984

COMPENSATION--OVERTIME--FIREFIGHTING--STANDBY TIME

Firefighters who work two 24-hour and one 12-hour shift in each administrative workweek and receive premium pay on an annual basis for regularly scheduled standby duty are precluded from receiving additional overtime pay for work, in excess of 8 hours a day that is part of their regularly scheduled administrative workweek. However, they may be entitled to receive compensation under the Fair Labor Standards Act, at a rate of not less than one and one-half times their regular rate for all hours in excess of 108 hours in a biweekly pay period.

B-214277 June 25, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
LOAN DISCOUNT FEES*

An employee who relocated in connection with a permanent change of station claims reimbursement for seller's

points or a loan discount fee which he paid as a part of the cost of selling his former residence. The claim may not be paid because, even though under Regulation Z, which implements the Federal Truth in Lending Act, seller's points are no longer included among finance charges, reimbursement for points or mortgage discounts as a miscellaneous expense of a real estate transaction is specifically prohibited by the Federal Travel Regulations and Volume 2 of the Joint Travel Regulations.

B-214719 June 25, 1984

LEAVES OF ABSENCE--COURT--ENTITLEMENT

Employee summoned to appear on several occasions in juvenile court proceedings in Pennsylvania concerning her son requests court leave under 5 U.S.C. 6322. The employee is not entitled to court leave since she was summoned as a party to the proceedings under a Pennsylvania statute which provides that the court shall summon the parents, guardian, or custodian, and any other persons as appear to the court to be "proper or necessary parties to the proceeding."

B-214117 June 26, 1984

TRAVEL EXPENSES--AIR TRAVEL--EXCURSION RATES--FORFEITURE--NON-OFFICIAL TRAVEL--TEMPORARY DUTY CANCELLATION

Employee scheduled personal travel and leave, and purchased round-trip excursion airline ticket, but later changed travel arrangements because of temporary duty assignment at end of period of leave. After employee departed on leave, she was notified the temporary duty assignment was canceled, and additional costs were incurred for her personal travel. She is obligated to reimburse agency only in the amount of her original expenses since, but for temporary duty assignment, she would have not incurred the additional expenses.

B-212362 June 28, 1984

OFFICERS AND EMPLOYEES--TRAINING--EXPENSES--THESIS PREPARATION, ETC. COSTS

Defense Logistics Agency civilian employee requests reimbursement for full cost of typing and copying

a thesis prepared in association with a long-term training program. Agency has broad discretion to pay all or part of the expenses of training, including all or part of thesis preparation costs. In employee's travel orders agency limited reimbursement to \$200, and stated that it was agency policy to so limit reimbursement unless orders specified differently. Based on the record before us, we will not overrule the agency's denial of reimbursement for these expenses. However, it is clear that the agency has authority to pay these expenses and we would have no objection if the agency chooses to do so.

B-213594 June 28, 1984

*COMPENSATION--RATES--HIGHEST PREVIOUS RATE--DEMOTION--
REQUESTED BY EMPLOYEE*

An employee requested a change to a lower grade from a Motor Vehicle Operator WG-6, step 5, to Firefighter (Structural) GS-4. The local installation set his rate of basic pay at step 8 based upon a local policy applicable to pay entitlement on voluntary demotions involving a change in pay systems. That policy resulted in selection of a rate lower than the maximum rate which could have been allowed under controlling law. The employee alleges that the policy was not consistent with the policy of other installations and seeks to have his pay set at step 10 of grade GS-4. The claim is denied since the pay-setting policy of the local installation was not in conflict with the agency wide regulation, and the employee's pay was set in accordance with the applicable regulation.

B-214256 June 28, 1984

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--
TIME LIMITATION--MANDATORY*

An employee, who 3 years and 8 months after his transfer, applied for an extension of the time period in which to claim reimbursement of real estate expenses is not entitled to reimbursement of real estate selling expenses, since his residence was not sold within

the 2-year period after his transfer, as required by travel regulations then in effect. The 3-year maximum period under amended regulations did not apply because the employee's 2-year period had expired before the amendment became effective.

B-215273 June 28, 1984

*COMPENSATION--SEVERANCE PAY--ELIGIBILITY--INTER-AMERICAN
FOUNDATION--PRESIDENT*

Chairman, House Committee on Foreign Affairs, jointly with the Chairman, House Subcommittee on Western Hemisphere Affairs, request opinion as to whether Inter-American Foundation (IAF) may grant severance pay to its former President. We conclude that payment may not be granted. The IAF is an agency within the meaning of the severance pay statute, and its President is excluded from the benefits of the severance pay provisions. Since the IAF's general statutory authority does not give it further authority to provide severance pay to the President, it may not administratively provide for such.

MILITARY PERSONNEL

B-213560 Apr. 3, 1984

*QUARTERS ALLOWANCE--BASIC ALLOWANCE FOR QUARTERS (BAQ)--
ASSIGNED TO GOVERNMENT QUARTERS--NONOCCUPANCY FOR PERSONAL
REASONS*

Where a member of the Navy, who is assigned to quarters of the United States, leaves his old station pursuant to permanent change-of-station orders prior to the original departure date, he may be paid a basic allowance for quarters commencing with his departure even though his formal assignment to quarters was not terminated because he left unaccompanied baggage in the quarters.

B-213696 Apr. 10, 1984

*STATION ALLOWANCES--MILITARY PERSONNEL--DEPENDENTS--
MAINTAINED OVERSEAS AT PLACE OTHER THAN MEMBER'S STATION*

When a service member transferred from a permanent duty assignment in Hawaii to a duty assignment in California, his dependents remained in the vicinity of his old duty station. After 1 year he was transferred to duty in Okinawa, a restricted area where his dependents could not join him. Station allowances on account of his dependents are not payable since the dependents' continuing residence in Hawaii was a matter of personal choice and not the result of the member's assignment to Okinawa.

B-213660 May 3, 1984

*TELEPHONES--PRIVATE RESIDENCES--MILITARY HOUSING--
GOVERNMENT FURNISHED*

A member of the Air Force who was ordered to vacate his quarters in a Government dormitory for 3 months during renovation was authorized reimbursement for allowing his private telephone service to continue as a less costly alternative to paying reconnection charges at his temporary quarters. During that period although he could not use his telephone he was able to charge toll calls to his account. Use of appropriated funds for reimbursement for the service charges that accrued during renovation is prohibited under 31 U.S.C. 1348. Relocation of a telephone for this temporary period is not

analogous to the situation in which telephone relocation charges were authorized because that case involved a permanent move caused by Government necessity and not a temporary move. Absent authority to pay for relocation of telephone service there is no authority to pay for basic service charges.

B-213238 May 9, 1984

PAY--RETIRED--DISABILITY--BASIC PAY REQUIREMENT FOR RETIREMENT

The monthly pay of midshipmen at the U.S. Naval Academy is not basic pay within the meaning of that term as used in chapter 61 of title 10 and title 37, United States Code. Thus, Navy officer may not have included in his disability rating for retired pay purposes the percentage of disability existing or incurred while he was a midshipman since such disability was not incurred as a member entitled to basic pay as required by 10 U.S.C. 1201.

B-213498 May 14, 1984

CLAIMS--EVIDENCE TO SUPPORT--ABSENCE OF RECORD--DISALLOWANCE OF CLAIM--TRANSPORTATION CHARGES

An Army Reserve officer claims payment for travel expenses incurred during a period of active duty for training in 1976. The claim first received in the General Accounting Office on August 26, 1981, is disallowed since in the intervening period between the performance of duty and request for payment, all Government records which would justify payment or refute nonpayment were lost or destroyed. The burden of proof absent such Government records is on the claimant and he has not furnished appropriate financial records documenting his entitlement to payment.

B-214770 May 14, 1984

DEBT COLLECTIONS--WAIVER--MILITARY PERSONNEL--ALLOWANCES--BASIC ALLOWANCE FOR QUARTERS (BAQ)

A Navy member received erroneous payments of a Basic Allowance for Quarters due to administrative error during a period when he was occupying Government family quarters. His Leave and Earnings Statements during

the period clearly showed he was receiving Basic Allowance for Quarters. Although he initially questioned the accuracy of his pay, he did not advise finance personnel that he was receiving the quarters allowance while living in Government quarters until 7 months after the erroneous payments began. Therefore, he was partially at fault in the matter in failing to promptly notify the finance officer that he was occupying Government quarters and not entitled to Basic Allowance for Quarters, thus precluding waiver of the Government's claim against him for refund of the overpayment.

B-214361 May 22, 1984

INTEREST--CLAIMS AGAINST THE UNITED STATES--MILITARY MATTERS

The widow of a retired military member seeks payment of an amount equal to investment interest she states was lost on the balance of a settlement payment to which she was entitled under the Military Claims Act. She claims that the check that was initially sent to her in payment was improperly drawn due to negligence, and claims the interest she lost from the date she received the first check until the date she received a second check which she was able to negotiate. The claim is denied since there is no authority for such a payment.

B-214932 May 29, 1984

DEBT COLLECTIONS--WAIVER--MILITARY PERSONNEL--ALLOTMENTS--FAILURE TO DEDUCT FROM PAY

A former Coast Guard member received erroneous payments due to failure of the Coast Guard to deduct a dependency allotment and an appropriate amount for a bond allotment from his pay. As a result his biweekly net pay increased by \$100 during a period when there was no increase in his entitlements. This should have alerted him to the fact that his pay may have been erroneous. Since he failed to make prompt inquiry of the appropriate finance officials when he received an unexplained increase in pay he is partially at fault for the erroneous payments thus precluding waiver of the Government's claim against him.

B-214118 June 1, 1984

PAY--MEDICAL AND DENTAL OFFICERS--SPECIAL PAY--ENTITLEMENT

An Air Force medical officer seeks retroactive payment of additional special pay covering a period of 1 year but he did not execute the required written agreement to remain on active duty for that period of time. Although he did remain on active duty for another year, at the time he should have executed the agreement, he declined to do so because he was planning to retire within less than a year. In the absence of administrative error and the intent on his part to remain in the service for another year, he is not entitled to payment as claimed.

B-213658 June 26, 1984

FAMILY ALLOWANCES--SEPARATION--TYPE I--ENTITLEMENT

An agreement incorporated into a divorce decree provided that there would be joint custody of the children of the marriage but that the children would reside with the member's former wife and visit the member frequently and for long periods. The member asserts that the children actually resided with him before and after the divorce until he was ordered overseas and that they would have continued to reside together but for the military orders. Under these circumstances, the separation between the member and his children resulted from the provisions of the divorce settlement and not from his military assignment. Thus he is not entitled to family separation allowance, type I.

INDEX

April through June 1984

	<u>Page</u>
AGENTS	
Government liability for acts beyond authority	
Erroneous information	B-213833 May 29...A-15
ATTORNEYS	
Fees	
Claims	
Statutory authority absence	B-205373 Apr. 24... A-7
CIVIL SERVICE REFORM ACT OF 1978	
Merit pay system	
Effective date of pay increases	B-210859 Apr. 19... A-7
CLAIMS	
Denial	
Entitlement basis lacking	B-212487 Apr. 17... A-6
Evidence to support	
Absence of record	
Disallowance of claim	
Transportation charges	B-213498 May 14... B-2
COMPENSATION	
Additional	
Supervision of wage board employees	
Retroactive pay adjustments	B-212581 May 16...A-11
Boards, committees, and commissions	
Land commissioners	
Hourly rate	B-193584 May 1... A-8
Increases	
Effective date	
"Beginning of first pay period after"	B-212581 May 16...A-12

INDEX

COMPENSATION - Con.

Page

Overtime

Firefighting

Standby time

B-213931

June 21...A-20

Traveltime

Administratively

controllable

B-210065

Apr. 2... A-1

Panama Canal employment system

Panama Canal employment system

v. competitive civil

service

B-208715

May 10...A-10

Rates

Highest previous rate

Adjustments

Retroactive

B-212833

June 4...A-17

Administrative discretion B-212833

June 4...A-17

Demotion

Requested by employee B-213594

June 28...A-22

Removals, suspensions, etc.

Backpay

Back Pay Act of 1966

Unjustified or unwarranted

removal requirement

B-213690

Apr. 16... A-5

Deductions from backpay

Severance pay

B-209349

Apr. 9... A-4

Severance pay

Eligibility

Inter-American Foundation

President

B-215273

June 28...A-23

INDEX

DEBT COLLECTIONS

Waiver

Civilian employees

Compensation overpayments

Sick leave

B-207676 May 7... B-4

Military personnel

Allotments

Failure to deduct

from pay

B-214932 May 29... B-3

Allowances

Basic allowance for

quarters (BAQ)

B-214770 May 14... B-2

FAMILY ALLOWANCES

Separation

Type I

Entitlement

B-213658 June 26... B-4

FEES

Parking

Privately owned vehicle

Temporary duty

B-214383 May 8... A-10

GENERAL ACCOUNTING OFFICE

Decisions

Hypothetical, academic, etc.

questions

B-214066 June 11... A-18

INTEREST

Claims against the United States

Federal employees

B-205373 Apr. 24... A-7

Military matters

B-214361 May 22... B-3

LEAVES OF ABSENCE

Administrative leave

Administrative determination

In lieu of holidays

B-214156 May 29... A-16

Court

Entitlement

B-214719 June 25... A-21

INDEX

<i>LEAVES OF ABSENCE - Con.</i>	<u>Page</u>
<i>Forfeiture</i>	
<i>Scheduling requirement</i>	B-213849 May 14...A-10
<i>Sick</i>	
<i>Recredit of prior leave</i>	
<i>Restoration after unjustified removal</i>	B-213604 May 15...A-11
 <i>MILEAGE</i>	
<i>Travel by privately owned automobile</i>	
<i>Between residence and headquarters</i>	B-202370 Apr. 2... A-1
<i>Incident to transfer</i>	
<i>Mileage rates</i>	B-206546 Apr. 3... A-2
 <i>OFFICERS AND EMPLOYEES</i>	
<i>Director, Institute of Museum Services</i>	
<i>Compensation</i>	B-213786 May 18...A-13
<i>New appointments</i>	
<i>Relocation expense reimbursement and allowances</i>	
<i>Non-entitlement</i>	
<i>National Credit Union Administration chairman</i>	B-210657 May 25...A-14
<i>Promotions</i>	
<i>Retroactive</i>	
<i>Entitlement</i>	
<i>Delay in processing personnel action</i>	B-211784 May 1... A-8
<i>Training</i>	
<i>Expenses</i>	
<i>Thesis preparation, etc. costs</i>	B-212362 June 28...A-21

INDEX

OFFICERS AND EMPLOYEES - Con.

Page

Transfers

Attorney fees

House purchase
and/or sale

B-210918 June 12...A-19

Effective date

Expenses incident to
change

B-213697 Apr. 16... A-6

Government v. employee interest

Relocation expense reimbursement

Administrative determination

Finality

B-213807 May 10...A-10

B-214881 May 15...A-11

Miscellaneous expenses

Lost or damaged
personal property

B-206546 Apr. 3... A-2

Real estate expenses

Actual residence at time of
official transfer requirement

Exception

B-213705 June 18...A-20

House title in more than one person

Pro rata expense
reimbursement

B-213861 May 21...A-13

Loan discount fees

B-214277 June 25...A-20

Lot sale

Integrated dwelling or mobile
home use requirement

B-213769 May 1... A-8

Permanent change of duty
station requirement

B-213730 Apr. 17... A-6

Time limitation

B-214321 Apr. 10... A-5

Mandatory

B-214256 June 28...A-22

B-214701 June 4...A-18

INDEX

<i>OFFICERS AND EMPLOYEES - Con</i>	<u>Page</u>
<i>Transfers - Con.</i>	
<i>Service agreements</i>	
<i>Failure to execute</i>	
<i>Effect on liability</i>	B-214244 May 22...A-14
 <i>Temporary quarters</i>	
<i>Dry cleaning and/or</i>	
<i>laundry expenses</i>	B-212921 May 30...A-16
 <i>Permanent dwelling</i>	
<i>occupancy</i>	B-213827 Apr. 2... A-2
 <i>Subsistence expenses</i>	
<i>Entitlement</i>	
<i>Administrative</i>	
<i>discretion</i>	B-206546 Apr. 3... A-3
<i>While househunting</i>	B-206546 Apr. 3... A-3
 <i>PAY</i>	
<i>Medical and dental officers</i>	
<i>Special pay</i>	
<i>Entitlement</i>	B-214118 June 1... B-4
 <i>Retired</i>	
<i>Disability</i>	
<i>Basic pay requirement</i>	B-212238 May 9... B-2
 <i>QUARTERS ALLOWANCE</i>	
<i>Basic allowance for quarters (BAQ)</i>	
<i>Assigned to Government quarters</i>	
<i>Nonoccupancy for</i>	
<i>personal reasons</i>	B-213560 Apr. 3... B-1
 <i>STATION ALLOWANCES</i>	
<i>Military personnel</i>	
<i>Maintained overseas at place</i>	
<i>other than member's</i>	
<i>station</i>	B-213696 Apr. 10... B-1

INDEX

<i>SUBSISTENCE</i>	<u>Page</u>
<i>Actual expenses</i>	
<i>High rate area</i>	
<i>Entitlement</i>	B-213021 May 2... A-9
<i>Per diem</i>	
<i>Fractional days</i>	
<i>Computation</i>	B-206546 Apr. 3... A-3
<i>Headquarters</i>	
<i>Prohibition against</i>	
<i>payment</i>	B-213970 Apr. 4... A-4
<i>Rates</i>	
<i>Administrative</i>	
<i>determination</i>	B-206546 Apr. 3... A-3
<i>Reduction</i>	
<i>Quarters furnished</i>	
<i>Propriety of reduction</i>	B-212401 Apr. 3... A-3
<i>Temporary duty</i>	
<i>At permanent post</i>	B-213816 May 22...A-13
<i>TELEPHONES</i>	
<i>Private residences</i>	
<i>Military housing</i>	
<i>Government furnished</i>	B-213660 May 3... B-1
<i>TRANSPORTATION</i>	
<i>Automobiles</i>	
<i>Foreign make</i>	
<i>Travel expenses incident</i>	
<i>to shipment</i>	B-213806 May 16...A-12
<i>TRAVEL EXPENSES</i>	
<i>Air travel</i>	
<i>Constructive cost reimbursement</i>	
<i>Military Airlift</i>	
<i>Command service</i>	B-209957 June 1...A-17

INDEX

<i>TRAVEL EXPENSES - Con.</i>	<u>Page</u>
<i>Air travel - Con.</i>	
<i>Excursion rates</i>	
<i>Forfeiture</i>	
<i>Non-official travel</i>	
<i>Temporary duty cancellation</i>	B-214117 June 26...A-21
<i>Lost or stolen tickets</i>	B-213833 May 29...A-15
<i>Overseas employees</i>	
<i>Home leave</i>	
<i>Transfers</i>	B-214066 June 11...A-18
<i>Renewal agreement travel</i>	
<i>Requirements</i>	B-214066 June 11...A-18
<i>Return for other than leave</i>	
<i>Separation</i>	
<i>Time limitation on travel</i>	B-204286 June 12...A-19
<i>Transfers</i>	
<i>Agency within U.S.</i>	B-213855 May 31...A-16

END