

**DECISION**

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

FILE:

B-184287

MATTER OF:

DATE:

SEP 10 1975

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DIGEST:

Ralph E. Pollara, intermittent consultant-  
transportation expenses.

Intermittently employed consultant may be paid transportation expenses pursuant to 5 U.S.C. 5703 and Paragraph C3053, subparagraph 2 of the Joint Travel Regulations, Volume 2, for commuting from his residence to place of employment where residence is outside corporate limits but within metropolitan or geographic area of place of duty, insofar as his intermittent employment occasions him transportation expenses he would not otherwise have incurred.

By letter dated June 24, 1975, the Department of the Army, through its Authorized Certifying Officer, requests advice as to whether the voucher submitted by Mr. Ralph E. Pollara may be certified for payment. Mr. Pollara, who we understand is an intermittently employed consultant hired under the authority of 5 U.S.C. 3109, has claimed reimbursement for travel between his home in Livingston, New Jersey and the Picatinny Arsenal, Dover, New Jersey--a round trip distance of 42 miles--for 9 days of his employment in June of 1974. His claim is for travel of 378 miles distance for which he seeks reimbursement of 12¢ per mile for a total claim of \$45.36.

The Certifying Officer questions the propriety of payment, noting a discrepancy between the language of subparagraph 2 of Paragraph C3053 of the Joint Travel Regulations (JTR), Volume 2 and our holding in 22 Comp. Gen. 231 (1942). While recognizing that the language of the above-cited paragraph of the JTR purports to authorize payment of mileage for transportation between an intermittently employed consultant's home or place of business and his place of duty notwithstanding that all may be located within the same metropolitan or geographic area, doubt is expressed inasmuch as several consultants, like Mr. Pollara, are retired former employees of Picatinny Arsenal who commute from the same residences they commuted from prior to retirement. Hence, their commuting costs are no greater than those they incurred as regular employees in commuting to and from work on a daily basis.

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The language of Paragraph C3053, JTR, Volume 2 here in question is as follows:

"C 3053 TRAVEL OF CONSULTANTS AND EXPERTS

1. AUTHORITY. Title 5 U.S. Code 5703 and the Defense Production Act of 1950 (64 Stat. 819, as amended; 50 U.S. Code, App. 2160), provide entitlements for travel expenses and allowances for consultants and experts who are in an employment status with or without compensation. Authorization for transportation, allowances, and reimbursement of expenses incident to temporary duty assignments will be in accordance with the provisions in this volume (see par. C8101-4).

"2. CONDITIONS. Consultants and experts employed intermittently or serving without compensation (W.O.C.) are entitled to the following:

\* \* \* \* \*

"2. expense for transportation for official travel between home and place of business and place of duty when these places are located in the same metropolitan or geographic area;"

That part of our holding in 22 Comp. Gen. 231, supra, which is indicated to be inconsistent with the above-quoted language of the JTR is summarized in the digests thereto as follows:

"The mere designation of an officer or employee, employed either for full or part time work, as a consultant and paying him only 'when actually employed' does not relieve him of the general requirement to bear the cost of transportation from his home or place of residence to his regular post of duty.

\* \* \* \* \*

"Where a consultant employed on the basis of 'when actually employed' works intermittently several days per week at the same post of duty and reports to that place and returns to his residence each week, such place of regular duty is to be regarded as his official station, even though the place of his residence has been designated as his official station, and he is not entitled to traveling expenses from and to his residence."

As suggested by the certifying officer, our holding placed the intermittently employed consultant in no different status than any full or part-time Federal employee with respect to his responsibility to bear the expense of commuting between his residence and place of duty. That decision, however, predated enactment of Public Law 79-600, approved August 2, 1946, 60 Stat. 806, which, at section 5, included special authority for payment of subsistence and transportation expenses of intermittently employed experts and consultants. This was codified as 5 U.S.C. 5703. Section 5703 of title 5, United States Code was amended by Public Law 94-22, 89 Stat. 84, approved May 19, 1975, and provides the following special authority.

"An employee serving intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis, or serving without pay or at \$1 a year, may be allowed travel or transportation expenses, under this subchapter, while away from his home or regular place of business and at the place of employment or service."

By virtue of this provision our holding in 22 Comp. Gen. 231, supra, is no longer applicable.

The language of Paragraph C3053 of the JTR Volume 2 quoted above is a reflection of our interpretation of section 5 of Public Law 79-600 as set forth at 28 Comp. Gen. 192 (1948) and B-143631, August 12, 1960. In the latter of those cases we considered the transportation expense claim of an intermittently employed consultant whose residence was outside the corporate limits but within the metropolitan or geographic area of his place of employment with the Federal government. We there indicated that, depending upon the particular circumstances of his assignments, and intermittently employed expert or consultant could be reimbursed transportation expenses insofar as his intermittent employment caused him to incur transportation costs he would not otherwise have had. In the particular case of the employee there involved we found that he had not in fact incurred additional transportation expenses by reason of his Federal employment. We stated in this regard as follows:

"The basis for payment of travel expenses \* \* \* is to reimburse an employee for additional expenses which he may incur by reason of traveling on official business. \* \* \* Similarly, if an employee ordinarily commutes from his home to perform business in the area in which the travel is performed, there would be no authority for reimbursement for the costs of commuting. However, the fact that the travel is performed at a place within commuting distance at which he ordinarily would not incur any additional transportation \* \* \* expenses would not preclude reimbursement of transportation costs \* \* \* where additional costs for transportation \* \* \* are necessarily incurred. 28 Comp. Gen. 192.

\* \* \* \* \*

"Mr. Donovan is privately employed by the Aluminum Company of America at Edgewater, New Jersey. He also spends part of his time at the C.I.O. Council in Bergen County, New Jersey. Both places are within commuting distance of his home. Therefore, the costs of transportation from his residence to his temporary place of duty in New York and return may not be allowed since such costs do not represent an additional expense which Mr. Donovan would not ordinarily incur in proceeding from his home to his place of private business."

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The rule expressed herein is unaffected by the amendment to section 5 by Public Law 94-22.

In accordance with the provision at Paragraph C3053, JTR, Volume 2 and insofar as his intermittent duty at the Picatinny Arsenal caused him to incur transportation expenses that he, as a retired employee, would not otherwise have had, Mr. Pollara's voucher may be certified for payment if otherwise correct.

R. F. KELLER

[Deputy], Comptroller General  
of the United States