

DECISION

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

50903

FILE: B-184229

DATE: SEP 2 1975

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MATTER OF:

Gerald F. Swanson - miscellaneous expense allowance
incident to transfer of station

DIGEST:

Employee's claim for miscellaneous expense allowance incident to transfer equal to 2 weeks' basic pay is disallowed in view of his failure to submit evidence of actual expenses incurred. His argument that regulation requiring actual receipts for payment of allowance in excess of \$200 is contrary to intent of Congress, is without merit. The language and legislative history of 5 U.S.C. 5724a(b) clearly indicate that allowance was limited to necessary and appropriate amounts under regulations to be prescribed.

By letter dated May 23, 1975, Mr. Gerald F. Swanson, an employee of the Internal Revenue Service, requests reconsideration of our Transportation and Claims Division's Settlement Certificate Z-2513697 of February 7, 1975, disallowing his claim for additional miscellaneous expenses in the amount of \$734.80.

Mr. Swanson's claim for a miscellaneous expense allowance based on 2 weeks' basic pay incident to his transfer from Milwaukee to Cleveland in December 1972 was disallowed under section 3.3 of Office of Management and Budget (OMB) Circular No. A-56 (revised August 17, 1971) since he had submitted no evidence of actual expenses supporting his claim for an amount in excess of the \$200 allowance prescribed therein. The language of section 3.3 here in question is as follows:

\ "3.3 Allowable amount. Employees eligible for a miscellaneous expense allowance will be paid an amount under 3.3a or reimbursed an amount under 3.3b, but not both, as follows:

"a. Allowances in the following amounts will be paid without support or other documentation of expenses:

"(1) \$100 or the equivalent of one week's basic pay, whichever is the lesser amount, for an employee without immediate family.

"(2) \$200 or the equivalent of two weeks' basic pay, whichever is the lesser amount, for an employee with immediate family.

"b. Allowances in excess of those provided in 3.3a, above, may be authorized or approved, if supported by acceptable statements of fact and either paid bills or other acceptable evidence justifying the amounts claimed; provided that the aggregate amount does not exceed the employee's basic pay at the time the employee reported for duty--for one week if the employee is without immediate family or for two weeks if the employee has immediate family. In no instance will the allowance amount exceed the maximum rate of grade GS-13 provided in 5 U.S.C. 5332 at the time the employee reported for duty. * * * (Emphasis added.)

Virtually identical language appears at Chapter 2, Part 3 of Federal Property Management Regulation (FPMR) 101-7, May 1973.

Mr. Swanson concedes his failure to submit supporting evidence. However, he believes such evidence is not required because section 3.3 of the regulation, in limiting employees to miscellaneous expense allowances of \$200 or \$100 in the absence of evidence of additional expenses, is contrary to the intent of Congress. He maintains that the statutory language authorizing payment of a miscellaneous expense allowance requires payment of no less than an amount equal to 1 or 2 weeks' basic pay, as applicable. The language of the Administrative Expenses Act of 1946, amendments, Public Law 89-516, 80 Stat. 323 to which he makes reference is as follows:

"Sec. 24. Under such regulations as the President may prescribe and to the extent deemed necessary and appropriate, as provided therein, and notwithstanding other reimbursement authorized under this Act, an officer or employee who is reimbursed under section 1(a) or section 23 of this Act shall, if he has an immediate family, receive an amount not to exceed two weeks' basic compensation, or, if he does not have an immediate family, an amount not to exceed one week's basic compensation: Provided, That such amounts shall not exceed amounts determined from the maximum rate of

grade GS-13 in the General Schedule of the Classification Act of 1949, as amended."

The above provision of law is now codified at 5 U.S.C. 5724a(b).

In support of his argument, Mr. Swanson relies upon the following quotation from page 6 of House Report No. 1199, 89th Congress, 1st Session, which explains the purpose of the miscellaneous expense allowance as follows:

"This section provides, if necessary and appropriate and under regulations to be prescribed by the President, for reimbursement over and above reimbursement otherwise received under the act, an amount not to exceed 2 weeks' basic compensation for employees with an immediate family and 1 week's basic compensation for single movers. These additional amounts would be payable to all employees who receive reimbursement under section 1(a) or new section 23 of the Administrative Expenses Act without the necessity of showing actual expenses, but shall not exceed the maximum rates of grade GS-13 of the Classification Act."

He makes further reference to language appearing at page 13 of the same report which speaks of miscellaneous expenses as "legitimate moving costs which merit reimbursement /but which/ would be administratively burdensome to handle on an actual expense basis."

The argument here advanced by Mr. Swanson was previously considered in B-163565, March 8, 1968. In response to the charge that the Bureau of the Budget had exceeded its authority by reducing the minimum allowance payable below 1 or 2 weeks' basic salary, we reviewed the statute and its legislative history and concluded that the limitation on reimbursement was fully supported. Insofar as is pertinent here, our discussion in that decision was as follows:

"Section 24 of the Administrative Expenses Act of 1946 as originally proposed in H.R. 10607, 89th Congress, 1st session, introduced by Congressman Rosenthal, was worded as follows:

"Sec. 24 Under such regulations as the President may prescribe and to the extent

deemed necessary and appropriate, as provided therein, and notwithstanding other reimbursement authorized under this Act, an officer or employee who is reimbursed under section 1(a) or section 2.3 of this Act shall, if he has an immediate family, receive an amount equal to two weeks' basic compensation, or, if he does not have an immediate family, an amount equal to one week's basic compensation: Provided, That such amounts shall not exceed amounts determined from the maximum rate of grade GS-13 in the General Schedule of the Classification Act of 1949, as amended.'

"The bill H.R. 10607 as reported by the Committee on Government Operations, House of Representatives on October 12, 1965 (Report No. 1199) was amended by striking out the words 'equal to' as they appeared (twice) in the proposed section and inserting the words 'not to exceed' in lieu thereof. The substitution of such language was explained on page 8 of the report as follows:

"The third and fourth amendments place a ceiling on the amount of miscellaneous expenses of 2 weeks' basic compensation for an employee with a family and 1 week's basic compensation for an employee without a family. Without the amendment these employees would receive a flat amount of 1 or 2 weeks' compensation for miscellaneous expenses.'

"The above amendments by the Committee may have been predicated to some extent on the remarks contained in our letter of September 10, 1965, printed on pages 24 through 27 of House Report No. 1199.

"Moreover, Senate Report No. 1357, 89th Congress, 2d session on H.R. 10607, on page 8 contains an

explanation of the provision in question as submitted to the Chairman, Committee on Government Operations, United States Senate, by the Bureau of the Budget under date of April 25, 1966. That explanation is as follows:

"Sixth, the bill would authorize the payment of a cash allowance in defraying a wide variety of miscellaneous expenses normally incurred when employees are transferred. The bill provides that the payments are to be allowed only to the extent deemed necessary and appropriate, as provided in administrative regulations. The payment could not exceed 2 weeks' basic compensation for employees with immediate families and 1 week's basic compensation for employees without immediate families. The bill further provides that the amounts of the payment shall not exceed amounts determined from the maximum rate of grade GS-13 in the General Schedule of the Classification Act of 1949, as amended."

We continue to believe that the language and legislative history of section 24 of Public Law 89-516 clearly indicate that the limitation on payment of the miscellaneous expense allowance to 1 and 2 weeks' basic pay as contained therein was intended as a ceiling and not a floor. The allowance is clearly limited to amounts deemed "necessary and appropriate, as provided in administrative regulations" (Senate Report No. 1357, supra). In view thereof we find no impropriety in the administrative requirement for a showing of actual expenses for reimbursement of more than \$200 or \$100, as appropriate. Both the Bureau of the Budget and now the General Services Administration have seen fit to impose the requirement, and the Congress has not changed the statute to show its contrary intent.

For the foregoing reasons the disallowance of Mr. Swanson's claim by our Transportation and Claims Division is affirmed.

R. F. KELLER
Comptroller General
of the United States

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