



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

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B-175608

January 22, 1973

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Mr. Steve F. Heller  
Authorized Certifying Officer  
Financial Management Division  
Agricultural Marketing Service  
United States Department of Agriculture

Dear Mr. Heller:

We refer to your letter of September 20, 1972, requesting our further consideration of Mr. Dick Gamble's claim for overtime compensation for time spent in a travel status which was the subject of our decision B-175608, June 19, 1972, addressed to you.

You state that in reliance upon our holding in 50 Comp. Gen. 519 (1971) (fourth case, page 525), the Consumer and Marketing Service (C&MS) has authorized payments of overtime compensation for travel by graders and inspectors outside the metropolitan area of their duty stations to provide services as requested by applicants since such travel time was not viewed as subject to agency control. In view of our decision in B-175608 which held that travel under what you consider to be similar circumstances was subject to agency control, you now ask whether payments made in reliance upon 50 Comp. Gen. 519 were in error.

You indicate that the circumstances of Mr. Albert W. Chumley's travel, 50 Comp. Gen. 519, and Mr. Gamble's travel, B-175608, are considered by C&MS to be identical in terms of the event that necessitated the travel. In this regard you state:

"\* \* \* In both cases, the Agency was responding to requests of applicants for grading service. The fact that, where possible, Agency policy is to assign graders to service certain plants on a rotational basis does not seem to us to give the Agency control of the hours the graders' services will be required. We merely determine which grader will be sent to provide services at the times requested by the plants. If, in the course of assigning a grader designated to service a plant during a specified calendar period,

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we must order travel time that is both outside regular work hours and away from the official duty station, we have considered such travel as resulting from an event we could not schedule or control. We have been authorizing overtime payment for such travel since receipt of 50 Comptroller General 519. In fact, we have processed retroactive payments for such travel time performed by graders back to the effective date of the statute on overtime pay for travel which results from events which cannot be administratively scheduled or controlled (Public Law 90-206)."

The Department of Agriculture's request for a decision in 50 Comp. Gen. 519 indicated that on two particular occasions Mr. Chumley was required to travel on Sunday to perform meat grading duties early Monday morning. We understood from that submission that Sunday was not included within Mr. Chumley's regular workweek and that the two inspectional assignments were not in the vicinity of his official station nor ones he was scheduled to perform on a regular basis. We stated in that decision as follows:

"\* \* \* In order for inspection and grading to serve the purpose intended by the statute, the services must be provided when requested, and to the extent that on this account an employee's travel cannot be scheduled during his regular duty hours, his travel is compensable at overtime rates. We view the needs of applicants for inspections and grading services as events over which the agency has no administrative control \* \* \*"

Your request for a decision in B-175608 explained that Mr. Gamble is assigned on a rotational basis for 90-day periods to provide grading services at various plant locations in and around Omaha and that the length of his and other graders' assignments, as well as their hours of work, are established by C&MS for reasons of sound management. We understand further that such plant assignments constitute Mr. Gamble's and other graders' regular duties and that they perform only occasional administrative functions at headquarters. Although we do not regard the needs of the applicants in Mr. Gamble's case as any more subject to agency control than we do in Mr. Chumley's

case, we do not consider, for the reason hereinafter stated, the circumstances of Mr. Gamble's travel to be within the scope of authority provided by 5 U.S.C. 5542(b)(2).

Public Law 90-206, approved December 16, 1967, in part, expanded the authority for payment of overtime by adding subsection (b)(2)(E)(iv). The Senate report on the legislation indicates that by that addition Congress intended, in part, to induce agency compliance with the provision of 5 U.S.C. 6101(b)(2) requiring the proper scheduling of travel and, in part, to provide overtime compensation for travel occasioned by emergencies or events beyond agency control in consideration for the imposition such travel makes upon employees' private lives. See page 31 of Senate Report No. 801 on H. R. 7797 wherein it is stated as follows:

"The committee has revised the provisions of the House bill in regard to traveltime and overtime pay. The Senate amendment revises present law so that an employee in the classified service, under wage board pay systems, or in the postal field service shall be paid for travel time outside of his regular work schedule if the travel involves the performance of work while traveling (such as an ambulance attendant taking a patient to a hospital); is incident to travel that involves the performance of work while traveling (such as a postal employee riding in a truck to a destination to pick up another truck and drive it back to his original duty station); is carried out under arduous conditions; or results from an event which could not be scheduled or controlled administratively.

"The committee believes that regulations to implement these provisions should take into account the provisions of section 16 of Public Law 89-301, which requires agencies to the maximum extent practicable to schedule travel within the regular work schedule. The committee is convinced that the heads of executive departments and agencies can do much more to prevent the abuse of an employee's own time.

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"We are not satisfied with the progress agencies have made to comply with the 1965 act. An employee should not be required to travel on his offday in order to be at work at a temporary duty station early Monday morning to attend a meeting. It is an imposition upon his private life that should not be made. Nevertheless, pay for travel status should not be made so attractive that employees would seek to travel on their offdays in order to receive overtime pay. Proper scheduling and administration planning is the answer to the problems of travel pay in many cases. When emergencies occur or when events cannot be controlled realistically by those in authority, traveltime must be paid for."

Where an employee's regularly scheduled duties involve assignments to which he commutes daily from his headquarters or residence, we do not regard his travel from home and back to perform those regularly scheduled duties as an imposition upon his private life significantly different than the travel required of an employee in reporting to his permanent duty station. For this reason we do not regard Mr. Gamble's travel as overtime hours of work within the meaning of 5 U.S.C. 5542(b)(2). Moreover as indicated in our decision of June 19, 1972, such travel was subject to control (scheduling) even though the event giving rise thereto resulted from an event which was not controllable. 50 Comp. Gen. 674 (1971).

We understand that many graders such as Mr. Gamble are required to report first to headquarters and from there to travel to their grading assignments. Where that requirement is for purposes other than merely facilitating their use of Government transportation and is regarded as within their regularly scheduled tours of duty, including regularly scheduled overtime, or where it is incident to their work, the time in travel from his headquarters may be regarded as hours of work. 43 Comp. Gen. 293 (1963). Similarly, if the employee actually performs work while traveling, regardless of whether he reports first to headquarters, the time involved may properly be considered hours of work.

Your letter also requests reconsideration of the position expressed in our letter B-175608 in regard to travel beyond the

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corporate limits but within the metropolitan area of an employee's duty station as being within the purview of the overtime provisions here in question.

The regulation of the Civil Service Commission Federal Personnel Manual Supplement 990-2, book 550, subchapter S1-3, adopts the following definition of "official duty station" also prescribed in the Standardized Government Travel Regulations:

"—By official duty station we mean the employee's designated post of duty, the limits of which will be the corporate limits of the city or town in which the employee is stationed, but if not stationed in an incorporated city or town, the official duty station is the reservation, station, or established area, or, for large reservations, the established subdivision thereof, having definite boundaries within which the designated post of duty is located. This use is the same use of this term as in the Standardized Government Travel Regulations."

You point out inconsistencies in the application of this definition to situations of graders assigned to permanent duty in small corporate areas whose temporary duty assignments outside the corporate limits involve shorter distances than they ordinarily travel from their homes to headquarters. These graders may be entitled to overtime compensation for their travel time, while graders permanently assigned to posts of duty within large corporate areas may be required to travel 30 or more miles within those corporate limits and yet be ineligible for payment of overtime compensation for that greater distance of travel involved. This result, you contend, does not effectuate the purpose of section 5542(b)(2) of title 5, United States Code, of compensating employees for the imposition that travel for the benefit of the Government makes upon their private lives. It is your opinion that a definition of "official duty station," perhaps in terms of a mileage radius, would permit the more realistic implementation of the law involved.

Under the presently prescribed regulation, it is not within an agency's discretion to redefine corporate limits as you have suggested, or otherwise to limit entitlement to overtime compensation

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to travel performed beyond a particular radial distance. Inasmuch as a definition such as you proposed is a matter for consideration by the Civil Service Commission, we suggest that your recommendation be directed to that agency.

With regard to travel such as Mr. Gamble performs between his residence and the plant to which he is assigned, you ask whether your agency may properly deny payment of mileage when he reports for work outside the corporate limits but near his permanent duty station. As indicated in our decision of June 19, 1972, the matter of authorizing mileage to an employee for the use of his automobile in connection with official travel is discretionary with the agency in which he is employed. In view thereof, we see no reason why mileage may not be denied in Mr. Gamble's case or others similar thereto, provided such action is not in conflict with regulations of your agency.

Your final question concerns the payment of per diem to employees who are on temporary duty for periods in excess of 10 hours beyond the corporate limits, but within the general area, of their permanent duty stations. You state that the Department of Agriculture has prescribed a per diem rate of "lodging cost plus \$10, not to exceed \$25" which cannot be denied, reduced or adjusted by agencies within the Department. That regulation, 7 AR 550(c)(4), provides as follows:

"Per diem for travel of less than 24 hours. Per diem for travel of less than 24 hours, when authorized under agency regulations, shall be computed in accordance with Section 6.6d of the Standardized Government Travel Regulations. However, when such travel does not require a night's lodging the per diem rate shall be \$10.00."

Section 6.6d of the Standardized Government Travel Regulations, referenced in the above regulation, provides as follows:

"d. Computation of basic entitlement. (1) Travel of 24 hours or less. For continuous travel of 24 hours or less, the travel period will be regarded as commencing with the beginning of the travel and ending with its

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completion, and for each 6-hour portion of the period, or fraction of such portion, one-fourth of the per diem rate for a calendar day will be allowed: Provided, That no per diem will be allowed when the travel period is 10 hours or less during the same calendar day, except when the travel period is 6 hours or more and begins before 6:00 a.m. or terminates after 8:00 p.m. (The proviso does not apply in the case of travel incident to a change of official station)."

Section 6.6d, supra, is, in effect, a presumption that when an employee travels more than 10 hours he incurs at least some of those expenses for which per diem is authorized and that one quarter of the daily per diem rate for each 6 hours involved is a fair rate of reimbursement for those expenses.

Also, section 6.3 of the Standardized Government Travel Regulations provides as follows:

"6.3 Agency responsibility for prescribing individual rates. a. General. It is the responsibility of each department and agency to authorize only such per diem allowances as are justified by the circumstances affecting the travel. Care should be exercised to prevent fixing per diem rates in excess of those required to meet the necessary authorized subsistence expenses. To this end, consideration should be given to factors which will reduce the expenses of the employee such as: known arrangements at temporary duty locations where lodging and meals may be obtained without cost or at prices advantageous to the traveler; established cost experience in the localities where lodging and meals will be required; situations where special rates for accommodations have been made available for a particular meeting or conference; the extent to which the traveler is familiar with establishments providing lodging and meals at a lower cost in certain localities, particularly where repeated travel is involved; and, the use of methods of travel

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where sleeping accommodations will be provided as part of the transportation expenses. The specific rules contained in b - e below will be applied in the situations covered."

Regarding your specific inquiry as to whether it is within the administrative discretion of your agency to establish a radius of 25 miles from the permanent duty station within which per diem is not payable, we have recognized that agencies generally have the authority and the responsibility to restrict payment of per diem upon a reasonable basis. We have no information, however, as to whether the regulations of the Department of Agriculture preclude agencies within the Department from imposing limitations such as you propose.

Your questions are answered accordingly.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General  
of the United States