

DOCUMENT RESUME

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[Per Diem during Period of Training]. B-187453. September 30, 1977. 3 pp.

Decision re: Elynore Cucinell; by Robert F. Keller, Acting Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Canal Zone Government.

Authority: Government Employees Training Act (5 U.S.C. 4101 et seq.). 5 U.S.C. 5702(a). B-164E64 (1968). E-174662 (1972).

A Federal employee objected to the refusal of the Canal Zone Government to allow her per diem during a period of training. The travel orders authorized no per diem. The agency has discretion to pay or reimburse all or part of the training expenses, and the agency policy of limiting reimbursements was a proper exercise of administrative discretion. (Author/SC)

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DECISION



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

Charles R. King
CP

FILE: B-187453

DATE: September 30, 1977

MATTER OF: Dr. Elynore Cucinell - Per Diem During
Period of Training

DIGEST: Employee of Canal Zone Government may not be allowed per diem incident to performance of training assignment as travel orders provided "No per diem authorized" pursuant to agency policy of limiting reimbursement of training costs. Agency has discretion under 5 U.S.C. § 4109 to pay or reimburse "all or part of the necessary expenses of training" and agency policy of limiting reimbursement is proper exercise of administrative discretion. Thus, employee's rights with regard to travel orders vested when travel was commenced and orders may not be retroactively modified to increase or decrease employee's entitlements, absent error apparent on face of orders or omission from travel order of some intended provision.

This action results from the refusal of the Canal Zone Government to allow Dr. Elynore Cucinell per diem incident to her performing official travel pursuant to a training assignment under the Government Employees Training Act, 5 U.S.C. §§ 4101, et seq.

Dr. Cucinell was authorized travel to attend the 28th Annual Meeting of the American Academy of Neurology in Toronto, Canada, from April 26 through May 1, 1976. Her travel orders authorized travel at Canal Zone Government expense and tuition and registration fees not to exceed \$180. The travel orders stated: "No per diem authorized."

The reason that Dr. Cucinell was not authorized per diem is explained in the submission as follows:

"The Canal Zone Government Health Bureau has limited funds available for training but there are a large number of professional personnel who

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periodically must attend professional meetings or obtain refresher training to keep abreast of the latest developments in their fields. Such training benefits both the Health Bureau and the individual concerned. Accordingly, insofar as possible, the employee is permitted to attend professional meetings or training services in a duty status and all travel and transportation expenses and registration fees are paid by the Government. When adequate funds are not available, it has been the policy of the Health Bureau to approve the training with the understanding that its financial obligation will be limited in one of the following ways:

- "1. Payment of transportation and registration fees (as in the present case), but no per diem.
- "2. Payment of registration fees and per diem with the employee paying his own transportation expenses (usually when employee is on leave near the place at which training occurs).
- "3. Payment of only per diem.
- "4. Payment of only transportation costs.

"This policy appears to be consistent with section 4109(a)(2) of Title 5, U.S. Code, which authorizes payment of all or part of the employee's training expenses. On the other hand, denial of per diem (or other subsistence expenses) seems to be improper under 5 U.S.C. § 5702(a) which states that an employee in a duty status away from his designated place of work is entitled to a per diem allowance."

We have previously held that a policy of not paying per diem during a period of training was a valid exercise of administrative discretion under 5 U.S.C. § 4109 (1970). B-164864, November 19, 1968. We believe

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that that case is the correct application of the provisions of 5 U.S.C. § 4109 for the reasons stated below.

Section 4109(a)(2)(A) specifically authorizes payment or reimbursement of all or a part of the necessary expenses of training, including inter alia, per diem, for an employee on a training assignment under the Government Employees Training Act. Thus, section 4109 provides specific authority to pay all or part of an employee's per diem while he is on a training assignment. Accordingly, we believe that the Canal Zone Government's refusal to grant Dr. Cucinell per diem during the period of training was a proper exercise of administrative discretion.

Furthermore, we note that the travel order specifically provided that no per diem would be payable. Properly issued travel orders may not be revoked or modified retroactively so as to increase or decrease the rights which have become final under the applicable statute or regulation, unless error is apparent on the face of the orders, or all facts and circumstances clearly demonstrate that some provision previously determined and definitely intended had been omitted through error or inadvertance. B-174662, May 3, 1972. Dr. Cucinell's entitlement with regard to the subject travel vested under the travel orders when she commenced travel. Since the travel orders clearly state that no per diem was authorized, no authority exists whereby the orders may be retroactively modified to provide for per diem.

Accordingly, the voucher may not be certified for payment.


Acting Comptroller General
of the United States