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DECISION



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

10,144

FILE: B-193797

DATE: May 11, 1979

personal names

MATTER OF: Arthur G. Alexiou - Per Diem v. Station Allowances - Intergovernmental Personnel Act

DIGEST: Civilian employee of National Oceanic and Atmospheric Administration detailed to University of California for 1 year under Intergovernmental Personnel Act (IPA) of 1970, 5 U.S.C. § 3375 (1976). Although Assignment Agreement provided for payment of per diem in lieu of subsistence and change-of-station allowances, agreement is without legal effect to bind Government since in 53 Comp. Gen. 81 (1973), this Office held that under section 3375, employees traveling on IPA assignments may receive per diem or station allowances, but not both. Since employee elected to receive per diem, he has no further entitlement.

AGCODO 68

This action is in response to a request by Mr. Ralph C. Reeder, Director, Office of Personnel, National Oceanic and Atmospheric Administration (NOAA), United States Department of Commerce, for a decision concerning the claim of Mr. Arthur G. Alexiou, an employee of NOAA, for payment of per diem and travel expenses for himself and his family incident to his assignment under the Intergovernmental Personnel Act (IPA) of 1970, approved January 5, 1971, Public Law 91-648, 84 Stat. 1909, 5 U.S.C. §§ 3371-3376 (1976).

By Assignment Agreement executed on February 28, 1977, Mr. Alexiou was temporarily assigned, during the period July 1, 1977, to June 30, 1978, from NOAA, Washington, D. C., to the Scripps Institution of Oceanography, University of California, La Jolla, California, under the provisions of the IPA. The Assignment Agreement stated that the agreement constituted the written record of the obligations and responsibilities of the agency and the employee. Attachment A of the agreement stated, in pertinent part, as follows:

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"Travel and Transportation Expenses and Allowances

"NOAA will reimburse Mr. Arthur G. Alexiou each way for travel and transportation expenses to and from the University worksite. Specific expenses allowed are as follows:

- "1. Roundtrip airfare for the incumbent and his immediate family at less than first class rates, or reimbursement at the allowable NOAA rates for travel by privately owned vehicle. Reimbursement for travel will be based on the lesser amount of airfare or automobile mileage rate.
- "2. Per diem allowance of \$25 per day for food and miscellaneous expenses is authorized for the incumbent and his family while in travel status between his home and the temporary assignment.
- "3. A relocation allowance for temporary quarters at the location of the temporary site for a maximum of 30 days is allowable as follows per 10-day period:

| | <u>"1st 10 days</u> | <u>2nd 10 days</u> | <u>3rd 10 days</u> |
|------------|---------------------|--------------------|--------------------|
| Employee | \$18.75 | Employee \$12.50 | Employee \$ 9.38 |
| Ea. Family | | Ea. Family | Ea. Family |
| Member | \$12.50 | Member \$ 8.34 | Member \$ 6.25 |

- "4. Per diem allowance of \$12 per day in lieu of transportation of household goods and personal effects, up to 365 days."

Mr. Alexiou states that in accordance with the travel allowances stipulated in Attachment A, he made and executed plans for the transportation of his family, four who traveled by airplane and two who traveled with him by automobile. The four members of his family who traveled by airplane were issued Government Transportation Requests. The employee reports that after 6 months had elapsed on his 1-year temporary assignment and after payment

of his initial voucher, he was informed by officials of NOAA that he did not have the option of per diem in lieu of subsistence and travel allowances for himself and his family, or, payment for transportation of household goods and travel allowances for himself and his family, but that he had to make a choice between per diem only, or, transportation of his household effects and family. Mr. Alexiou states that he was living in a furnished house he had leased in La Jolla and had rented his residence in suburban Washington, D. C., on a furnished basis. ^{He also noted} He contends that he could not, in the middle of the 1-year assignment, change his circumstances. ^{and} Since the agency would not take any action on any of the travel vouchers he had submitted for payment, he signed a document opting to receive per diem, reserving the right to appeal upon completion of his temporary assignment.

✓ The claimant contended that he acted in good faith and made his travel plans and living arrangements on the basis of the signed Assignment Agreement which was valid in all respects as he was informed by proper authority in NOAA. He requested that the Government live up to the terms of the agreement. ✓

✓ The agency reported that inasmuch as an error was made in the regulations of NOAA and in the application of law by officials of the agency, Mr. Alexiou ^{the claimant} was allowed to choose between receiving per diem for himself, or, transportation of his household goods and family in a best effort to minimize reimbursement by the employee to the Government. ✓

Title IV of the IPA provides for the assignment of personnel between the Federal Government and State and local governments and institutions of higher learning for periods which should generally not exceed 2 years. The Act, as codified in section 3375, title 5, United States Code, provides, in pertinent part, as follows:

"(a) Appropriations of an executive agency are available to pay, or reimburse, a Federal or State or local Government employee in accordance with--

"(1) subchapter I of chapter 57 of this title, for the expenses of--

"(A) travel, including a per diem allowance, to and from the assignment location;

"(B) a per diem allowance at the assignment location during the period of the assignment; and

"(C) travel, including a per diem allowance, while traveling on official business away from his designated post of duty during the assignment when the head of the executive agency considers the travel in the interest of the United States * * *."

In 53 Comp. Gen. 81 (1973), based upon our review and interpretation of the language of the IPA and its legislative history, we held that Federal employees who are assigned to State and local governments and to institutions of higher education are not entitled to both per diem and change-of-station allowances for the same assignment, even though 5 U.S.C. § 3375 permits the payment of both the benefits associated with a permanent change of station and those normally associated with a temporary duty status. We stated that while the language in section 3375 authorizes the use of appropriations for the expenses listed, it does not state whether an employee on an IPA assignment may receive reimbursement for all such expenses. In the absence of statutory language authorizing reimbursement for all the listed expenses, we concluded that employees traveling on IPA assignments may receive either per diem in lieu of subsistence or the change-of-station allowances authorized in the section, but not both. 57 Comp. Gen. 778 (1978); Matter of Arnold Belkin, B-185496, August 26, 1976, and Matter of Donald B. Kornreich, B-170589, August 8, 1974.

Further, noting that in some circumstances IPA assignments may last as long as 4 years, we stated that the agency concerned should determine administratively whether an employee is to be authorized expenses applicable to a change of station or paid per diem in lieu of subsistence. We pointed out that cost to the Government should be one of the factors taken into account by the agency in making such a determination. Matter of Raymond F. Moss, B-180599, November 14, 1974.

Based upon the foregoing precedent decisions of this Office, it is clear that Mr. Alexiou is entitled to either per diem in lieu of subsistence or change-of-station allowances. Thus, that portion of the Assignment Agreement entered into between NOAA and the State of California which purportedly granted Mr. Alexiou both benefits, is without legal effect to bind the Federal Government to make both payments in contravention of the statutory prohibition against such dual payments. Belkin, supra. This Office is without authority to enlarge upon the benefits provided in the IPA.

The claimant's
Recognizing that ~~Mr. Alexiou's~~ temporary assignment was for only 1 year; in light of the administrative errors by officials of NOAA and reliance by the employee on the explicit terms of the Assignment Agreement; and since the evidence does not show that cost to the Government was not taken into consideration by the agency, ~~we interpose~~ *there was* no objection to the election by the claimant to receive per diem in lieu of subsistence instead of change-of-station allowances.

The employee
~~In view of the foregoing and since Mr. Alexiou has~~ elected to receive per diem in lieu of subsistence, he is not entitled to payment of change-of-station allowances.

T. F. Keller
Deputy Comptroller General
of the United States