

15004
15005
Mr. Pruitt
PLM/H



DECISION

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

FILE: B-199612

DATE: September 24, 1980

MATTER OF: Neil E. Wernsing - [Request for waiver of indebtedness] and reimbursement of money paid toward debt

DIGEST:

Veterans Administration employee who questions his indebtedness for per diem overpayment and requests reimbursement for money he paid toward debt may not be granted cancellation of indebtedness or reimbursement since rule is well established that per diem expenses are not allowed at place where employee is on temporary duty after employee receives notice that same location will serve as his permanent duty station.

This action is the result of an appeal by an employee of the Veterans Administration (VA) to a settlement of our Claims Division concluding that he is indebted to the United States for the amount of per diem he received while performing temporary duty at a station which was designated to become his permanent duty station. We affirm this settlement for the following reasons.

Mr. Neil E. Wernsing was employed as a Special Investigator in the Office of Investigations, Office of the Inspector General (VA), in Los Angeles, California. After numerous meetings, it was decided in January of 1978 that Mr. Wernsing would travel to Denver for the purpose of establishing an investigative office. At this time, Mr. Wernsing was informed that once the office became operational, he would be transferred permanently from Los Angeles to Denver. Additionally, the day following his arrival in Denver, Mr. Wernsing signed an agreement requiring him to remain in Government service for one year. Serving in a temporary duty status for the months of February through April, Mr. Wernsing submitted three travel vouchers showing his per diem expenses. These vouchers were initially approved and paid, but have recently been determined by the Finance Division of the Veterans Administration to have been paid in error. Therefore, it was decided that Mr. Wernsing had been improperly paid \$2,030 for fifty-eight days of per diem expenses and he was expected to pay the sum back.

~~012159~~

113405

B-199612

On October 23, 1978, Mr. Wernsing submitted a reclaim voucher to the Finance Division to have the debt set aside. Subsequently, the matter was forwarded to GAO and our Claims Division decided on February 26, 1980 that the debt was proper for collection. Soon thereafter, Mr. Wernsing's indebtedness to the Government was reduced from \$2,030 to \$1,539.98 due to an approved payment of \$490.02 in temporary quarters expenses. Thus, \$1,539.98 less money already paid toward the debt is the amount Mr. Wernsing is presently seeking to have cancelled.

Mr. Wernsing says, in effect, that he should not be penalized in this case since he was not aware that he was not entitled to per diem for the period of temporary duty, particularly when his family remained in California during most of the period. He also notes that it is inequitable to charge him alone with the responsibility for knowledge of the regulations, when other individuals in VA finance offices were aware of this situation and did not advise him concerning his temporary duty and subsequent change of station entitlements, even when he made inquiries concerning the assignment.

Payment of per diem to employees away from their posts of duty is authorized by 5 U.S.C. § 5702 (1976) and the implementing provisions of paragraph 1-7.6a of the Federal Travel Regulations (FPMR 101-7, May 1973). The location of an employee's permanent duty station for travel and per diem purposes has been consistently viewed by this Office to be the place at which the employee performs the major portion of his duties and where he is expected to spend the greater part of his time. Following this rationale, per diem expenses may not be allowed at a place where an employee is on temporary duty after he receives notice that the location is to become his permanent duty station. 24 Comp. Gen. 593, 595 (1945); B-188093, October 18, 1977. A formal notification of transfer is not necessary to terminate an employee's per diem entitlement while on duty at

B-199612

a location to which he is to be transferred. Notice of transfer is sufficient when it imparts actual knowledge to the employee of the position and location of transfer. B-188093, October 18, 1977.

Prior to leaving Los Angeles, Mr. Wernsing was aware that he was definitely being transferred and Denver was to become his new permanent duty station. The fact that Mr. Wernsing had signed an agreement to remain in Government service for one year further evidences that he knew the transfer was permanent. Thus, Mr. Wernsing had actual notice of the impending transfer and he had been informed that the transfer was permanent. Furthermore, as the Claims Division noted in its February 26, 1980 letter to the Controller of the VA, Mr. Wernsing's Travel Authority for Permanent Duty, dated March 1, 1978, identified Denver, Colorado, as his new permanent duty station.

Therefore, although he resided in Denver in a temporary duty status for three months, Mr. Wernsing may not be allowed per diem expenses since he had received prior notice that Denver would be his new permanent duty station.

While it is unfortunate that Mr. Wernsing was not given proper advice concerning his entitlements, in these circumstances, such actions do not afford a basis for authorizing the payment of per diem to him since the Government is neither estopped nor bound by unauthorized acts of its agents.

Accordingly, Mr. Wernsing is not entitled to per diem during the period involved and the erroneous payments are properly for collection. The settlement of our Claims Division must be affirmed.



For The Comptroller General
of the United States

Memorandum

September 24, 1980

TO : Associate Director, FGMSD - Claims Group (Room 5858)

FROM : *Hilton J. Fowler*
Comptroller General
For TheSUBJECT: Cancellation of debt resulting from erroneous payments
of per diem made to Neil E. Wernsing - B-199612-O.M.;
Z-2809290

Returned is your file Z-2809290 and copy of our decision B-199612 of today in which we sustain the settlement of your Group, concluding that Mr. Wernsing is not entitled to per diem for a period of temporary duty at his new permanent duty station.

Attachments - 2



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON D.C. 20548

In reply refer to:
B-199612

September 24, 1980

The Honorable Alan Cranston
United States Senator
One Hallidie Plaza, Suite 301
San Francisco, California 94102

Dear Senator Cranston:

This is in response to your letter of June 25, 1980, with enclosures, in which you requested that we review the claim of the United States Government against Mr. Neil E. Wernsing for erroneous payments of per diem expenses made by the Veterans Administration.

Enclosed is a copy of our decision, B-199612, affirming the action of our Claims Division which denied Mr. Wernsing's request to cancel his indebtedness.

While it is unfortunate that Mr. Wernsing was provided inaccurate or erroneous information concerning his entitlements, as can be seen from the enclosed decision, we have no alternative but to deny his claim.

We regret that a response more favorable to your constituent may not be made.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Aorolan".

For The Comptroller General
of the United States

Enclosure