

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

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FILE: B-198939

DATE: April 3, 1981

MATTER OF: Roy A. Harlan - [Relocation benefits following Intergovernmental Personnel Act assignment]

DIGEST:

1. Employee returned to permanent duty station following Intergovernmental Personnel Act assignment and was authorized temporary quarters reimbursement. Family did not join employee for 1-1/2 years but claim for temporary quarters reimbursement for family may not be denied. Notwithstanding policy to limit or deny temporary quarters where employee arrives before family, travel orders may not be modified retroactively by agency to deny reimbursement.
2. Employee returned to permanent duty station following Intergovernmental Personnel Act (IPA) assignment and was reimbursed for miscellaneous expenses allowance. However, statute authorizing certain relocation expenses incident to IPA assignment (5 U.S.C. § 3375) does not permit reimbursement for miscellaneous expenses.

The first issue in this case is whether a claim for temporary quarters subsistence expenses which have been authorized in advance may be denied where the employee spends 1-1/2 years at his permanent duty station prior to the arrival of his family. Since reimbursement was authorized in advance, we hold that the travel orders may not be retroactively modified to deny the claim. The second issue is whether an employee may be reimbursed for a miscellaneous expense allowance in connection with termination of an Intergovernmental Personnel Act (IPA) assignment and the employee's return travel to his official duty station. We hold that a miscellaneous expense allowance is not payable in connection with IPA assignments.

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This decision is in response to the appeal by Mr. Roy A. Harlan of our Claims Division settlement dated January 31, 1980, denying his claim for temporary quarters subsistence expenses. Mr. Harlan, a Community Services Administration employee, accepted an IPA assignment for 2 years in Little Rock, Arkansas, and at the completion of that assignment he returned to his official duty station in Dallas, Texas, effective December 8, 1976. Mr. Harlan reported for duty on that date, but his family remained in Little Rock until his son graduated from high school. In May 1978, Mr. Harlan's family vacated their residence in Little Rock and moved to Dallas, and, in connection with this travel, Mr. Harlan claimed temporary quarters subsistence expenses for a period of 30 days.

The agency questioned payment of the claim and our Claims Division denied the claim on the basis that under the applicable regulations the period allowed for temporary quarters shall be reduced or avoided if the employee had adequate opportunity to complete arrangements for permanent quarters at the new duty station. On appeal, Mr. Harlan argues that due to his weekend commuting to Little Rock and the difficulty he encountered in selling his old residence, he was not able to locate a satisfactory residence in Dallas before his family moved.

Under the provisions of 5 U.S.C. § 3375 (1976), employees who receive IPA assignments may be reimbursed for temporary quarters subsistence expenses as provided under 5 U.S.C. § 5724a(a)(3) (1976). The implementing regulations for section 5724a are contained in the Federal Travel Regulations (FTR) (FPMR 101-7), and those regulations provide the following policy statement in para. 2-5.1 concerning authorization of the allowance for temporary quarters subsistence expenses:

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"Policy. Heads of agencies shall prescribe procedures for administering these provisions reasonably and equitably so that the necessity for allowing subsistence expenses and the amount of time an employee and members of his immediate family use temporary quarters is justified in connection with the employee's transfer to a new official station. As a general policy, the period for temporary quarters shall be reduced or avoided if a round trip to seek permanent residence quarters has been made or if, as a result of extended temporary duty at the new official station or other circumstances (for example, if the family does not move until some time after the employee's transfer), the employee has had adequate opportunity to complete arrangements for permanent quarters."

Mr. Harlan and the agency are arguing over whether he had adequate opportunity to locate permanent quarters while he was stationed in Dallas and prior to his family's move. However, we note that the agency authorized Mr. Harlan reimbursement for temporary quarters for a period not to exceed 30 days and that the travel authorization stated "Dependents will travel at a later date." We believe the determination to reduce or deny the reimbursement for temporary quarters because Mr. Harlan was arriving before his family should have been made before the travel authorization was issued.

It is well established that travel orders may not be modified retroactively so as to increase or decrease the rights which have become fixed under the applicable statutes or regulations unless an error is apparent on the face of the orders and all the facts and circumstances clearly demonstrate that some provision previously determined and definitely intended

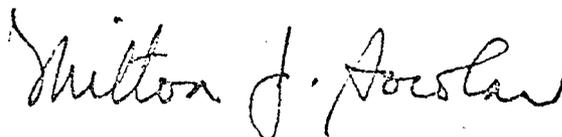
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has been omitted through error or inadvertence in preparing the orders. 48 Comp. Gen. 119 (1968); 24 Comp. Gen. 439 (1944); and 23 Comp. Gen. 713 (1944). No such error appears in this case, and, therefore, we find no basis for denying Mr. Harlan's claim for reimbursement for temporary quarters subsistence expenses.

Since the agency was aware that Mr. Harlan's family would travel at a later date, the agency had the opportunity prior to authorization of the travel to limit or deny reimbursement for temporary quarters in accordance with the policy statement quoted above. Failing that, we find no authority to limit or deny Mr. Harlan's claim after the fact. Therefore, we overturn the Claims Division determination and hold that Mr. Harlan is entitled to reimbursement for temporary quarters subsistence expense.

In reviewing Mr. Harlan's claim and vouchers we noted that Mr. Harlan claimed and was reimbursed for a miscellaneous expense allowance in the amount of \$200. However, 5 U.S.C. § 3375 (1976) lists those relocation expenses which are reimbursable in connection with IPA assignments, and we have held that since a miscellaneous expense allowance is not listed in section 3375 it is not payable in connection with IPA assignments. Donald B. Kornreich, B-170589, September 18, 1974.

Accordingly, Mr. Harlan's claim for temporary quarters may be allowed, less the amount he received for miscellaneous expenses. A settlement will be issued by our Claims Group or the agency, as appropriate.



Acting Comptroller General
of the United States