

DECISION

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

FOYMAN

25632

FILE: B-207447

DATE: June 30, 1983

MATTER OF: William T. Burke

DIGEST:

1. Employees temporarily assigned to State or local governments under the Intergovernmental Personnel Act are entitled to either per diem or change-of-station allowances but not both. The agency should determine, taking cost to the Government into consideration, whether to authorize permanent change-of-station allowances or per diem in lieu of subsistence. Agency should also recognize that ordinarily for assignments of 2 years, per diem would be inappropriate.
2. Travel advances are in the nature of a loan given to an employee and should only be given when clearly necessary. Also, travel advances should be held to the minimum amount necessary which generally will be an amount to cover a time period before a voucher can be prepared by the traveler and processed by the agency. A \$28,500 advance given an employee to cover his estimated per diem for a 1-1/2-year period is clearly beyond the contemplation of the statute and regulations authorizing travel advances.
3. An employee on a 2-year Intergovernmental Act assignment was given an advance of \$28,500 based on 1-1/2 years' per diem at the maximum rate which clearly was not in accord with regulations governing travel advances or the computation of per diem for extended periods of duty. Since it appears that he should have been given change-of-station allowances rather than per diem, and since in other respects he and the agency contemplated that his assignment would be a relocation, including purchase of a home suitable for himself and five members of his family

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and moving of household goods, his allowances should be computed based on a permanent change of station rather than a temporary duty assignment. Action should be taken to collect any excess amount the employee received.

The Acting Assistant Secretary--Indian Affairs, Department of the Interior, requests an advance decision regarding the appropriate travel and transportation entitlements of an employee, William T. Burke, who, while on an Intergovernmental Personnel Act (IPA) assignment in New Mexico, purchased a house at his IPA duty station.

BACKGROUND

Under the authority of the Intergovernmental Personnel Act, 5 U.S.C. §§ 3371-3376, the Department of the Interior, Bureau of Indian Affairs, detailed Mr. Burke to the Pueblo of Taos, New Mexico,¹ to serve as the Director of Economic Development from approximately June 1, 1981, to June 1, 1983.

Since Mr. Burke's duty station was Washington, D.C., his assignment to Taos necessitated that he relocate. It appears that Mr. Burke and the Bureau expected that he would relocate his family from Alexandria, Virginia, to Taos, and initially, the Bureau considered providing Mr. Burke travel allowances and per diem for the entire assignment at Taos as well as travel allowances for his family and transportation of household goods. Shortly before Mr. Burke was to commence his assignment, the Bureau officials involved in the assignment became aware that an employee on an IPA assignment was only entitled to travel and per diem while at the assignment or travel for himself and his family and

¹ Mr. Burke is actually a permanent employee of the Environmental Protection Agency, and apparently he was detailed to the Bureau so that he could be assigned to the Pueblo of Taos by the Bureau under the IPA. By agreement between the agencies the Environmental Protection Agency was to provide 75 percent of Mr. Burke's salary and benefits and the Bureau of Indian Affairs was to provide 25 percent of his salary and benefits plus per diem during the IPA assignment.

transportation of household goods. An employee on an IPA assignment may not receive both per diem in lieu of subsistence and change-of-station allowances. 53 Comp. Gen. 81 (1973).

However, apparently Mr. Burke had committed himself to the assignment and because of alleged difficulties in finding adequate temporary lodging for himself and his family, he had contracted to purchase a home in the Taos area. Mr. Burke had entered into this contract on April 18, 1981. He subsequently rented out his home in Virginia.

In justification of the purchase in Taos, Mr. Burke alleges that he sought to rent adequate housing for himself and his family in the Taos area but that he was unable to obtain such housing. In support of this he submitted a March 6, 1981 letter to him from a Taos, New Mexico, realtor which explains that finding a rental property to meet Mr. Burke's requirements would be difficult in the Taos area although perhaps possible in the Santa Fe area approximately 60 miles distant. The realtor then suggested to Mr. Burke that his needs might better be satisfied if Mr. Burke purchased a residence.

The case record is otherwise silent in regard to the events leading up to Mr. Burke entering into a purchase and sale agreement on April 18, 1981, for the purchase of a home in the Taos area. The record does contain a copy of a memorandum for the record on Bureau stationary signed on May 26, 1981, by Kenneth L. Payton, Acting Deputy Assistant Secretary for Operations, Indian Affairs, U.S. Department of the Interior, and on May 27, 1981, by Mr. Burke. The memorandum states that "[i]ncident to this [IPA] assignment, Mr. Burke was forced to purchase a home in Taos, New Mexico, in the absence of available rental housing suitable for a family of six in that area." Additionally, the memorandum explains that Mr. Burke received more than the 60-day cash advance allowed under Bureau regulations because Mr. Burke had to take a second mortgage on his Virginia residence, two mortgages on the house purchased in Taos, and that he incurred significantly high costs in preparation for the assignment other than for purchase of a house. This memorandum is an after-the-fact justification since Mr. Burke entered into the purchase and sale agreement on April 18, 1981.

Under the terms of the purchase and sale agreement, the sale price was \$142,500 of which the downpayment was to be \$30,000. The balance of the purchase price, \$112,500, was to be carried by the seller on a real estate contract with the terms that Mr. Burke would assume and make payments on a first mortgage with a balance of approximately \$29,000. Also, he would pay the balance of the purchase price, \$83,500, at 11 percent interest with only an annual payment of \$5,000 on each anniversary of the contract to be applied to outstanding interest and a balloon payment of the outstanding principle and deferred interest on the third anniversary of the contract.

Prior to reporting to Taos, Mr. Burke was given an extraordinary travel advance of \$28,500 even though agency regulations specified that travel advances should not exceed "an amount required to cover expenses for a period of not more than 60 days." This advance was to cover his costs for nearly 1-1/2 years under a "Liquidation Schedule for Repayment of Travel Advance" which the Bureau prepared on May 22, 1981, and which Mr. Burke subsequently signed. Under this Schedule, among other things, Mr. Burke was to "voucher" \$50 per day or \$1,500 per month for the first 17 months for a total of \$25,500 to be applied to the outstanding travel advance. For the entire 24-month assignment, the total estimated cost was \$37,250 consisting of 700 days at \$50 per day while at his IPA assignment site and 30 days at \$25 per day while on temporary duty at other locations.

Consistent with the above-described memorandum, the Bureau issued travel orders to Mr. Burke on May 26, 1981, that authorized him \$50 per day while at his IPA assignment location and additional subsistence expenses for temporary duty at various locations at the authorized rate. The estimated cost was \$37,250. Also, the IPA assignment agreement for Mr. Burke was amended on June 1, 1981, to be consistent with his receipt of per diem. Originally, when executed on March 2, 1981, the IPA assignment agreement only specified that Mr. Burke would receive payment for his travel and transportation and that of his family and household goods.

In March 1982, nearly 10 months after his IPA assignment began, Mr. Burke apparently submitted a travel voucher

Covering his assignment up to that time. That voucher was returned by the Bureau's Chief, Division of Accounting, in Albuquerque, for additional information to support the amounts claimed.

In early April of 1982, Mr. Burke resubmitted a voucher to the Bureau in which he claimed \$50 a day from the time he left his residence in Alexandria, Virginia, on May 28, 1981, until March 31, 1982, except for October 1981. For October 1981, Mr. Burke was unsure how to compute his per diem because he was on temporary duty in Alaska for certain days in this month. Along with the voucher, Mr. Burke submitted a detailed memorandum dated April 8, 1982, that explained the background of his situation and the justification for the reimbursement. Apparently, there had been changes in the personnel at the Bureau who originally had approved Mr. Burke's assignment and resulting per diem claim. The Bureau's accounting officers now were seeking to have Mr. Burke justify the per diem rate of \$50 based on the purchase of the home.

In his memorandum of April 8, 1982, Mr. Burke took issue with the Bureau's questioning of several matters including his purchasing a home at Taos as well as the per diem rate he claimed. It is Mr. Burke's opinion that he does not have to justify purchasing as opposed to renting a residence as long as he does not claim more than the \$50 a day. He justified the \$50 a day in several ways. First, he suggested that the agency divide the purchase price of the Taos residence by 730 days for a per diem of \$197 per day. Next, he suggested using the interest he was paying on a second mortgage of \$30,000 he took on his Virginia residence which he used as a downpayment on the Taos residence as well as the interest on the two mortgages on his Taos residence. He arrived at annual interest of \$16,535 or \$45 a day. Mr. Burke next indicates that perhaps the \$197 and \$45 should be combined for a daily total of \$242. Mr. Burke also complained in his memorandum about the large personal expense and great problems the IPA assignment had caused him.

While Mr. Burke did not go into great detail in his April 8, 1982 memorandum regarding the personal expense and problems the IPA assignment had caused him, these were detailed in a memorandum of February 11, 1982, he prepared

which is part of the case record. Mr. Burke points out that "[t]he fund of \$37,250 was to be disbursed to me and vouchered by me in accordance with the liquidation schedule agreement in May 22, [1981] BIA Memorandum* * *." He then provided a recap of actual needs and estimated needs against this fund as follows:

"College travel, housing differential, per paper submitted to BIA (Ref B)	\$17,000
Shipping HHE -- out - Actually charged	7,900
Shipping HHE back to VA - estimated return	7,900
Transportation family - round trip, per original estimate (unchanged)	<u>5,500</u> \$38,300*(vs fund of 37,250)

* This does not include:

- . Any allowance for loss of wife's business income.

Actual out-of-pocket:

- . Costs incurred by me in pay-outs on work which I would have done myself or not done at all if house had not been rented.
- . Loss of rental income for 3 months while other costs of new home were continuing.
- . Cost of damages during 3 month vacancy of first home (This ate up additional 1-2 months rental income)."

Additionally, Mr. Burke complains he was never reimbursed travel costs before entering on duty and local travel costs after entering on duty.

Due to questions raised by the various factors described above, in early May 1982, the Chief, Disbursements Section of the Bureau's Albuquerque office, submitted the case here for our advance decision. We did not issue a decision then because we subsequently learned that the

entire matter surrounding Mr. Burke's situation was being investigated by the Inspector General's Office of the Department of the Interior. The investigation was concluded without any formal action being taken against Mr. Burke; however, he was advised that the conclusion of that investigation should not be understood to foreclose any administrative action. We then reopened the matter at the request of the Acting Assistant Secretary, to consider questions raised as to the computation of Mr. Burke's travel allowances.

DISCUSSION

Under 5 U.S.C. § 3372 an employee detailed to an IPA assignment may be given an assignment not to exceed 2 years which may be extended for an additional 2 years by the head of a Federal agency. Upon being detailed, the employee's entitlement to travel expenses is governed by 5 U.S.C. § 3375 which states in pertinent part:

"(a) Appropriations of a Federal 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 Federal agency considers the travel in the interest of the United States;

"(2) section 5724 of this title, for the expenses of transportation of his

immediate family and of his household goods and personal effects to and from the assignment location;

"(3) section 5724a(a)(1) of this title, for the expenses of per diem allowances for the immediate family of the employee to and from the assignment location;

"(4) section 5724a(a)(3) of this title, for subsistence expenses of the employee and his immediate family while occupying temporary quarters at the assignment location and on return to his former post of duty.

"(5) section 5724a(b) of this title, to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and"

These provisions were included since Congress recognized that employees who took part in the exchange program would incur additional expenses. The entitlements were intended to be broad enough to provide for the needs of the Federal, state, and local employees en route to, from, and during their assignments in either the Federal Government, or state and local governments. See H.R. Rep. No. 91-1733, 91st Cong., 2d Sess. 20, reprinted in [1970] U.S. Code Cong. Ad. News 5898. See also 53 Comp. Gen. 81, 83.

While we have recognized that the travel entitlements for an employee on an IPA assignment were intended to be broad enough for the needs of the employee concerned, we have not considered these entitlements to be extraordinary ones or ones without limit. For example, in 53 Comp. Gen. 81, 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 concluded that employees traveling on IPA assignments may receive either per diem in lieu of subsistence or the change-of-station allowances authorized by 5 U.S.C. § 3375, but not both. We also noted that the needs of the IPA assignee could be met without applying a different rule for employees traveling on IPA assignments from that which applies to employees traveling on training assignments or on official business only.

With the above background in mind our threshold inquiry is whether the Bureau's action in authorizing a per diem to Mr. Burke while he was detailed to the Pueblo at Taos was appropriate. We have noted that in some instances IPA assignments may last as long as 4 years, and we have stated that the agency concerned should determine whether the employee is to be authorized expenses applicable to a change of station or paid per diem in lieu of subsistence. 53 Comp. Gen. 81. In making this determination the agencies should be mindful that cost to the Government is a factor to be taken into account. Matter of Alexiou, B-193797, May 11, 1979, citing Matter of Moss, B-180599, November 14, 1974. Moreover, agencies also should be mindful that "[o]rdinarily under the Standard Government Travel Regulations, per diem allowances are provided for travel and temporary duty stations and not for extended assignments such as two years." Federal Personnel Manual, Chapter 334, "Temporary Assignment of Employees Between Executive Agencies, and States, Local Governments, and Institutions of Higher Education," paragraph 1-7a (Instruction 195, June 19, 1973).

In deciding whether to authorize a per diem for an IPA assignee, a fundamental factor which the agency must consider is that the same rules apply to per diem for employees on IPA assignments as to employees on temporary duty. See 53 Comp. Gen. 81, 83; and 5 U.S.C. § 3375(a)(1), which indicates that the IPA employee receives per diem under subchapter I of chapter 57, the general statutory authority for payment of per diem. Therefore, per diem for an IPA employee is for the same purpose as per diem for an employee on temporary duty and it "is designed to reimburse an employee for the extra expense arising because he is not at his residence" (emphasis added). Matter of Greer, B-204725, June 2, 1982, citing Bornhoft v. United States, 137 Ct. Cl. 134, 136 (1956).

In the present case both the Bureau and Mr. Burke seemed to treat the per diem calculated at the maximum rate payable for the 2-year period, as a fund to be given Mr. Burke because of certain expenses he incurred when he relocated his family. A per diem is not for this purpose. Rather, if an employee wishes to relocate his family, then the appropriate thing would be for the agency to authorize relocation expenses. This is particularly true in a case such as this where the initial assignment was for the maximum 2-year period and it appears there would have been a significant cost saving to the Government.

It must be emphasized that neither per diem nor relocation expenses are to be paid an employee for many of the expenses that Mr. Burke includes in his statements of expenses for which he indicates the "fund" of per diem was to cover. The Government is not responsible for the loss of his wife's business income, the extra travel between his children's residence and their college, or the cost of the second mortgage he took on his Virginia residence.² Also, while he includes the cost of shipping his household goods and his family's travel from Alexandria to Taos, these costs would have been reimbursable if Mr. Burke had been authorized relocation expenses but are not to be covered by per diem. We must emphasize that the IPA program is one in which Congress has set out certain entitlements for an employee and there is no authority for these entitlements to be expanded. Therefore, if the employee finds the entitlements are not sufficient to enable him to accept the assignment, the employee should decline the assignment.

In this case it appears that the agency gave little, if any, consideration to the cost to the Government, since treating the assignment as a change of official duty station would have been substantially less expensive to the Government while still covering Mr. Burke's authorized change-of-station expenses. Instead, the Bureau took what from the beginning was a long-term assignment on which it was clear Mr. Burke intended to move his family and household goods, and treated it as temporary duty for travel allowance

² It should be noted that Mr. Burke did rent his Virginia residence while he was at Taos.

purposes. This was apparently for the purpose of providing Mr. Burke with the largest possible payment, that is, by creating a so-called "fund" based on the maximum per diem rate, and then advancing him \$28,500 of that fund.

Ordinarily, Government employees traveling on official business are expected to provide themselves with funds to meet current expenses, except to the extent that transportation requests and travel advances may be used to reduce the need for travelers to use their own funds. See Federal Travel Regulations (FTR) FPMR 101-7 (May 1973), paragraph 1-10.1, in effect at the time Mr. Burke's travel advance was made.

The agency's internal regulations limited any travel advance to a maximum of 60 days' funds. This was in recognition of the requirement that vouchers normally should be filed monthly and the vouchers should then be paid within 30 days. Such a regulation appears consistent with the intention of the law authorizing travel advances, 5 U.S.C. § 5705, and the implementing Federal Travel Regulations which provide that "[a]s a general rule, advances shall be held to a minimum and allowed only when it is indicated that an advance is warranted." Federal Travel Regulations, FPMR 101-7, para. 1-10.3a (May 1973 and September 1981). This is consistent with the nature of travel advance which is a loan of funds to an employee in anticipation of the employee incurring reimbursable travel expenses. See 54 Comp. Gen. 190 (1974); and B-183489, June 30, 1975. Thus, when an employee receives a travel advance he is indebted to the Government; he has not received a fund to use as he pleases but rather he has received money which can only be used for authorized purposes.

While in some cases it may be necessary to give an employee a travel advance covering more than 60 days, no unusual circumstances appear in Mr. Burke's case to have justified the advance he received. What the agency did, in effect, was give Mr. Burke an interest-free \$28,500 loan to be collected over an 18-month period. In our view neither the statute nor the regulations contemplate such an advance. We are unable to understand the agency's justification for such an advance except that it appears to have been an attempt to provide a large payment under the most

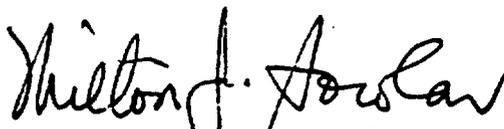
favorable possible terms to Mr. Burke, in lieu of paying him the appropriate relocation allowances.

As to the per diem rate (\$50) used in this case, it was the maximum rate authorized in the Taos area at the time. Under the regulations it is based on the average cost of housing plus an allowance of \$23 for meals and miscellaneous expenses, with the total not to exceed \$50. FTR paragraphs 1-7.2a and 1-7.3c (Temp. Reg. A-11, Supp. 11). It appears that the agency gave little or no consideration to the applicable regulations concerning computation of, and authorizing per diem for, extended periods of assignments. Paragraph 1-7.3a, FTR, provides that it is the responsibility of each Department and agency to authorize only such per diem allowances as are justified by the circumstances affecting travel. Care is to be exercised to prevent fixing per diem rates in excess of those required to meet necessary authorized subsistence expenses. To this end, consideration is to be given to factors which reduce the employee's expenses. Paragraph 1-7.3d provides that for assignments involving extended periods at temporary duty stations where travelers are able to secure lodging and meals at lower costs, the per diem rates "shall" be adjusted downward. The agency's regulations were in accord with these requirements and also provided that for extended stays, the appropriateness of the prescribed per diem rate should be reviewed after 30 days and again after 60 days at the same location and adjusted as appropriate. This was not done in Mr. Burke's case, and apparently he did not even file a voucher until 10 months after the assignment began.

As is indicated above, the travel advance based on a per diem rate of \$50 appears to have been paid as a means of reimbursing Mr. Burke for various costs he indicated he should not have been required to bear including travel and transportation of his family and household goods and his family's housing in Taos. Per diem is not paid for these purposes but is for the employee's extra expenses incurred in traveling away from home. To have been authorized properly it should have been based on reasonable long-term lodging and subsistence costs of Mr. Burke alone, such as he might have incurred in a rented room or apartment suitable for one person, not for a family of six in a large house.

In addition, the \$28,500 so-called travel advance was so large as to be outside the realm of the statutory and regulatory authorization for travel advances, and in our view was in the nature of an unauthorized, interest-free personal loan to Mr. Burke. Although we recognize that agencies have discretion in how to treat IPA assignments, in this case in view of the obvious disregard of the regulations, including the authorization of per diem at the maximum rate (most of it being paid in a lump-sum advance), the determination to pay per diem rather than relocation expenses was clearly improper. What appears to have been intended from the beginning was that Mr. Burke and his family would relocate to Taos incident to this assignment. This is what Mr. Burke's and the agency's actions prior to the assignment indicate, and this is what Mr. Burke did. Accordingly, his travel and transportation allowances should be computed on the basis of a change of station rather than on a per diem basis. That is, he is entitled to travel allowances for himself and his family and transportation of his household goods from Alexandria, Virginia, to Taos, New Mexico, and return at the end of the assignment in accordance with Chapters 1 and 2, FTR, and 53 Comp. Gen. 81 (1973). He is not entitled to per diem while at Taos since that is considered his permanent official station; however, he is entitled to appropriate per diem for official travel away from Taos. Also, since the IPA makes no provision for reimbursing an employee for the expenses of the purchase and sale of residences, Mr. Burke is not entitled to those allowances. 5 U.S.C. § 3375.

Mr. Burke should be advised to file vouchers for these allowable expenses and his entitlements computed accordingly. To the extent that he has received a travel advance in excess of these allowances, appropriate collection action should be taken.)

for 
Comptroller General
of the United States