

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

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**FILE:** B-212614**DATE:** February 22, 1984**MATTER OF:** Daisy Levine, et al.**DIGEST:**

1. Where orders assign newly appointed seasonal employees to a duty station where they are fed and lodged and all their duties are to be performed at that station, they cannot be viewed as itinerant employees for travel per diem purposes.
2. Where newly appointed employees report to an administrative headquarters merely for personnel processing and perform all duties at an assigned duty station in the field, the reporting station cannot be considered their duty station for travel per diem purposes even though the agency designates it as such on the employees' orders. There is no authority to pay per diem to the employees from the time they departed the reporting station.

An authorized certifying officer of the Department of the Interior requests a decision on the question of whether travel vouchers submitted by four temporary employees may be certified for payment, and whether amounts already paid on similar claims should be collected.<sup>1</sup> The employees were recruited by the Southwest Cultural Resources Center, Division of Cultural Research, Albuquerque, New Mexico, to perform seasonal work as members of an archeological survey crew in the general vicinity of Chaco Cultural National Historic Park, New Mexico, referred to also as Chaco Canyon. The certifying officer suspended payment on the recent claims because of doubt as to whether Albuquerque, the station designated by the employing agency, or Chaco Canyon, should be the official duty station for determining entitlement to travel allowances.

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<sup>1</sup>John P. Duran, authorized certifying officer, Southwest Region, National Park Service, Sante Fe, New Mexico, also forwarded comments from the Chief, Division of Cultural Research, the employing agency [which vigorously defend the agency's determination to authorize per diem for these employees]. The vouchers forwarded by Mr. Duran are returned but they may not be certified for payment.

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We find that Chaco Canyon was the employees' duty station because that is where they expected, and were expected, to perform their duties. Therefore, the pending claims should be disallowed, and the amounts previously paid should be collected.

FACTS

The Division of Anthropology, Southwest Cultural Resources Center, issued notices of personnel actions appointing four individuals to the position of archeologist to serve approximately 5 months beginning during late April 1983. The purpose of the assignments was the conduct of an archeological field survey. The employment document required 80 hours of work per biweekly pay period and designated Albuquerque as the employees' duty station. Travel documents authorized travel from Albuquerque to Chaco Canyon upon employment and return to Albuquerque at the end of the temporary period of employment. They indicated that travel to and from Albuquerque on weekends would be required to enable the crew to carry out its survey. However, there is no evidence that duties were performed in Albuquerque on weekends. The travel authorization provided for use of Government lodging, and specified per diem rates of \$23 while traveling and \$7 while at Chaco Canyon. The use of a Government vehicle was also authorized. It appears that the agency's recruitment bulletin represented that the employees would receive travel per diem and lodging during their employment.

The employees' pay records show that they performed 80 hours of work per pay period consisting of 8 hours per day, Monday through Friday. Three employees reported first to Albuquerque while the other employee reported directly to Chaco Canyon. There is no indication that any duties were performed in Albuquerque. Travel claims indicate that weekend travel to and from Albuquerque was performed, but again there is no indication that work was performed in Albuquerque. The actual field work did involve traveling but this was primarily by foot and was performed in the general vicinity of Chaco Canyon. If any work was performed at a greater distance from Chaco Canyon, travel was apparently performed on a daily basis with the employees being fed and lodged at Chaco Canyon during the entire period covered by the vouchers.

The claims are for subsistence while at Chaco Canyon and during travel to and from Albuquerque.

#### ISSUES

The certifying officer questions the validity of the designated duty station because the records indicated that the employees performed all duties at Chaco Canyon, and the weekend travel was solely for the convenience of the employees. He sees no legal basis for designating Albuquerque as their duty station. In his opinion the law requires designation of the location where the major part of the employees' work will be performed as the permanent duty station--in this case, Chaco Canyon.

The employing office contends that the individuals were itinerant employees because archeological survey work is unpredictable in that locations of required study and the density of archeological sites cannot be determined with precision in advance. Therefore, the possibility existed that during their tours the employees would be required to move from Chaco Canyon to another basing point. In this case the employees actually remained at Chaco Canyon because the field work in the Chaco Canyon vicinity was sufficient for the season. The employing office argues that in view of the itinerant nature of their employment, it was necessary to designate some location as their duty station, and, according to the agency, Albuquerque, the location of the employing office, was the logical choice for designation.

The office further points out that members of field survey crews work long hours under unpleasant physical conditions. Their work is described as requiring long hours, most of which are spent walking with packs carrying provisions while exposed to the direct sun. These conditions, reportedly, have resulted in illness of some crewmembers. Apparently, because of the working conditions, there was an understanding that the employees would receive per diem and lodging.

The issue is whether the possibility that new employees might move, during their seasonal tours of duty as members of an archeological survey crew, from their first assigned duty station in the field to another duty station, is a proper basis for designating the appointing office as their

official duty station for travel per diem purposes, even though no duties are actually performed at that office.

LAW

The authority for payment of a per diem allowance is 5 U.S.C. § 5702 (1976), which authorizes payment when the employee is away from his designated post of duty. The regulations do not define "temporary assignment," but FTR para. 1-7.6a prohibits payment of per diem at an employee's official duty station. Matter of Hawkins, B-210121, July 6, 1983. This is so because the expenses that otherwise would be paid by the allowance are considered personal to the employee. 53 Comp. Gen. 457 (1974).

The determination of what constitutes an employee's official duty station involves a question of fact and is not limited by administrative determination. Matter of Halcomb, 58 Comp. Gen. 744 (1979). For example, the authority to designate an official duty station cannot be used to designate a wrong location for the purpose of augmenting salaries. Further, the administrative headquarters or place shown on travel orders cannot be the official duty station if the work is performed elsewhere. 31 Comp. Gen. 289 (1952).

Merely reporting for duty at a location where an employee takes an oath, is placed on the payroll and submits to Government supervision, does not make the location the employee's duty station. 41 Comp. Gen. 371 (1961). There must be some duties performed beyond the mere processing for employment. Matter of Halcomb, cited above.

Generally, an employee is itinerant when the assignment requires substantial continuous movement from place to place in the field. 22 Comp. Gen. 342 (1942). However, itinerants are subject, generally, to the same laws and regulations dealing with per diem as other classes of employees. 23 Comp. Gen. 162 (1943). A newly appointed itinerant employee must perform some duty at his reporting station then he may be paid per diem while performing duty at temporary duty points. However, the designation of his permanent duty station remains for determination under the facts applicable. 22 Comp. Gen. 342, cited above.

ANALYSIS

Although the employing agency asserts that the employees could have been required to move from Chaco Canyon during their temporary employment, the evidence supports the conclusion it was expected that all of their duties would be performed at Chaco Canyon. During the period covered by the vouchers, all duties were performed there. However, even if there may have been a possibility of relocation, the evidence does not support the agency's conclusion that it was necessary to designate the appointing office, Albuquerque, as the employees' official duty station.

Although the travel orders show Albuquerque as their duty station and the employees were instructed and did report there first, there is no evidence that the employees did anything there other than report, and process employment papers. Further, those orders direct travel from Albuquerque to Chaco Canyon upon employment and return to Albuquerque on September 2, 1983, apparently the estimated date on which employment would terminate. No duties were performed at Albuquerque when they initially reported there or on weekends.

The travel orders clearly assigned the employees to Chaco Canyon for duty. Food and lodging was provided at that place and duties were performed in that vicinity. Later information indicates that the employees may have worked in Albuquerque at the end of their assignments but this change in assignment apparently resulted from the certifying officer's disallowance of the employees' claims, and was not originally contemplated.

CONCLUSION

While the employees moved frequently among different archeological sites during their temporary employment, they returned daily to Chaco Canyon for lodging and meals. Moreover, the travel documents furnished them indicate that they were to spend their whole period of the employment at that place. Since they did not move from that duty station they cannot be considered as itinerant employees.

Albuquerque was merely the administrative headquarters since no duties were performed there, and the fact that it

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was designated as the official duty station on the travel orders does not change the fact that the employees were assigned to duty and performed the actual work at Chaco Canyon. Therefore, while the employees were assigned to that station, they were not away from a properly designated duty station, within the meaning of 5 U.S.C. § 5702 during the period covered by the vouchers.

Although the assignment may have involved the endurance of considerable physical hardship, employees' salaries may not be augmented by the incorrect designation of an official duty station. Based upon the employees' orders, the nature of their assignments and the actual duties performed, Chaco Canyon was their official duty station and since no duties were performed at Albuquerque, the agency had no discretion to designate it as their official duty station. Therefore, the payment of travel per diem was not authorized.

While it is unfortunate that the employing office erroneously determined that Albuquerque was the employees' official duty station, and represented to the employees that travel expenses would be paid, the United States is not bound by their unauthorized acts. Matter of Peterson, B-191039, June 16, 1978. Therefore, the suspended claims may not be paid, and the amounts previously paid on similar claims should be collected. Further, the usual charges for meals and lodgings furnished by the Government should be charged against these employees. However, waiver of the resulting debts may be considered as erroneous payments of pay or allowances (failure to deduct the cost of meals and lodgings furnished from pay otherwise due) under 5 U.S.C. § 5584.



Acting Comptroller General  
of the United States