

DECISION

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

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FILE: B-215008**DATE:** September 25, 1984**MATTER OF:** David D. Reckard - Claim For Travel Expenses and Overtime Compensation**DIGEST:**

1. An employee was transferred to a new duty station for 14 months during the resolution of his grievance on a prior improper transfer. The employee alleges that the agency delayed processing his grievance in violation of its own procedures, and that, therefore, he is entitled to temporary duty allowances for his assignment at the new duty station. Matters relating to grievances are within the jurisdiction of the agency and the Office of Personnel Management, and will not be considered by this Office. In any event, corrective action on the employee's grievance did not change his duty status from permanent to temporary, and he may not be paid temporary duty allowances.
2. An employee claims overtime compensation for the relocation travel he performed on a Sunday in order to report to his new duty station on Monday morning. The time the employee spent in a travel status does not qualify as compensable overtime under 5 U.S.C. § 5542, since his travel did not result from an administratively uncontrollable event.

Ms. Barbara P. Pomeroy, Comptroller of the Bureau of Alcohol, Tobacco, and Firearms (BATF), Department of the Treasury, requests our decision on the claim of Mr. David D. Reckard, an employee of BATF. Mr. Reckard claims temporary duty allowances associated with his transfer to a new permanent duty station pending the resolution of his grievance on a prior improper transfer. Also,

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Mr. Reckard claims overtime compensation for the time he spent performing relocation travel on a nonworkday.

For the reasons discussed below, we find no basis upon which to allow Mr. Reckard's claims for temporary duty allowances and overtime compensation.

TEMPORARY DUTY ALLOWANCES

Facts

Mr. Reckard was employed in BATF's Phoenix District Office when he was transferred effective July 26, 1981, to the agency's office in Los Angeles, California. On August 3, 1981, Mr. Reckard filed an informal grievance alleging that his transfer to Los Angeles was punitive and requesting that the transfer be rescinded. Subsequently, on September 15, 1981, he formally grieved the transfer, asking that he "not be involuntarily transferred to any location," but requesting the option of a transfer to Fort Worth, Texas, if he was not selected for reassignment to Houston, Texas. Although the agency denied Mr. Reckard's grievance on September 4, 1981, the agency had decided, by letter dated August 26, 1981, to transfer Mr. Reckard from Los Angeles to a location where the climate would not be detrimental to the health of Mr. Reckard's wife. Effective September 20, 1981, the agency reassigned Mr. Reckard to Fort Worth, and authorized the payment of his relocation expenses. However, it appears that he only occupied temporary lodgings while he was stationed in Fort Worth.

On August 20, 1982, the grievance examiner determined that Mr. Reckard's reassignment to Los Angeles "presents the appearance of being punitive in nature." Although he found no impropriety in Mr. Reckard's subsequent transfer to Fort Worth, the grievance examiner recommended that the agency allow Mr. Reckard to return to duty in the Phoenix office. Effective November 14, 1982, the agency transferred Mr. Reckard to Phoenix, and authorized the payment of his moving expenses.

Mr. Reckard claims reimbursement for "living expenses" he incurred in Fort Worth during the period November 3, 1981, to November 14, 1982. Specifically, Mr. Reckard claims that he incurred over \$6,733.73 in lodging costs

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because the agency failed to render a decision on his grievance within 90 days from the date the grievance was filed, August 3, 1981, in violation of the agency's own grievance procedures and limitations stated in the Federal Personnel Manual.

The agency questions whether Mr. Reckard is entitled to temporary duty allowances, pointing out that the grievance examiner did not find any impropriety in his permanent reassignment to Fort Worth. Also, the agency cites our decision in Marie B. Ferrell, B-198381, February 13, 1981, discussed below.

Discussion

The basis of Mr. Reckard's claim for temporary duty allowances is that the agency violated its own grievance procedures in not issuing a decision on his grievance within 90 days. This Office does not have jurisdiction to inquire into matters which relate to the processing of a grievance. See Samuel H. Stern, B-202098, April 22, 1982; and Donald J. Tate, B-203622, January 19, 1982. Such matters are for consideration by the employing agency and the Office of Personnel Management. 5 C.F.R. Part 771 (1984).

We would note, however, that even if the agency violated its grievance procedures in failing to render a decision on Mr. Reckard's grievance by November 3, 1981, Mr. Reckard would not be entitled to temporary duty expenses for the duration of his permanent assignment in Fort Worth. As the agency report points out, the grievance examiner did not find that Mr. Reckard's reassignment to Fort Worth was improper. Moreover, we have consistently held that an administrative determination to rescind an improper transfer does not change the nature of the transfer from permanent duty to temporary duty. See Marie B. Ferrell, cited above, Anthony A. Esposito, B-197023, March 14, 1980, and decisions cited therein. Under such circumstances, an employee is not entitled to travel expenses or per diem because those expenses are payable only if an employee is performing duty away from his permanent duty station. See Marie R. Streeter, B-191056, June 5, 1978.

Accordingly, since Mr. Reckard was permanently stationed in Fort Worth during the period November 3, 1981,

to November 14, 1982, he is not entitled to temporary duty allowances for that period. He would be entitled to reimbursement for any relocation expenses he incurred incident to his transfer from Los Angeles to Fort Worth.

OVERTIME COMPENSATION

Facts

As indicated previously, Mr. Reckard was transferred from Phoenix to Los Angeles effective July 26, 1981. The agency had notified him of this transfer by letter dated July 1, 1981, instructing him to report for duty in Los Angeles at 8 a.m. on Monday, July 27, 1981. The agency also advised Mr. Reckard that he would be authorized reimbursement for relocation expenses.

By letter of July 8, 1981, Mr. Reckard requested that the agency delay his transfer pending the investigation of certain charges against him. Apparently, the agency did not respond in writing to this letter.

Mr. Reckard signed a 12-month service agreement on July 20, 1981, and, on July 24, 1981, he was verbally issued an authorization number for his travel to Los Angeles. At that time, Mr. Reckard requested that his reporting date be extended so that he would not be required to perform relocation travel on Sunday, July 26, 1981. The agency declined to reschedule Mr. Reckard's reporting date and, on July 26, he traveled by Government-owned automobile to Los Angeles.

Mr. Reckard submitted a grievance requesting overtime compensation for the time he had spent performing relocation travel on Sunday, July 26, 1981. The grievance examiner decided that Mr. Reckard was entitled to overtime pay, finding that he had justifiably delayed his travel until Sunday, July 26, pending the execution of a service agreement and the agency's issuance of travel orders. The agency refused to implement the grievance examiner's recommendation, determining that the time Mr. Reckard spent in a travel status did not qualify as compensable overtime under 5 U.S.C. § 5542 (1982).

Discussion

We note from the record before us that Mr. Reckard is exempt from coverage under the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. (1982), and, accordingly, his entitlement to overtime compensation is governed by the provisions of 5 U.S.C. § 5542. Section 5542(b)(2) provides that time spent in a travel status away from an employee's official station shall not be considered hours of employment unless, among other exceptions not applicable here, the travel "results from an event which could not be scheduled or controlled administratively." The phrase "could not be scheduled or controlled administratively" refers to the ability of an executive agency to control the event which necessitates an employee's travel. See Gene L. DeCondo, B-146288, January 3, 1975.

Nothing in the record shows that an event beyond the agency's control required Mr. Reckard to travel to his new duty station on Sunday, July 26, 1981. See 50 Comp. Gen. 519, 522-523 (1971). We also note that although Mr. Reckard's departure for Los Angeles may have been delayed until he signed the service agreement and received authorization for the travel, the transfer notice dated July 1, 1981, clearly advised him when he was scheduled to report for duty in Los Angeles. Accordingly, we find no basis to conclude that Mr. Reckard's travel on Sunday resulted from an administratively uncontrollable event or that the travel is compensable as overtime under the provisions of 5 U.S.C. § 5542.

For the reasons stated above, Mr. Reckard's claim for temporary duty allowances and overtime compensation may not be allowed.

for 
Comptroller General
of the United States