

DECISION

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

FILE: B-214966

DATE: December 27, 1984

MATTER OF: Robert W. Arndorfer - Travel and Subsistence
Expenses at Location Subsequently Made
Permanent Duty Station

DIGEST:

This Office is presented with a request to determine whether an employee who performed temporary duty at his newly designated permanent duty station between the time he was notified of his transfer and the effective date of that transfer may receive reimbursement of per diem and travel expenses. We are remanding the case to the employee's agency to make a determination in accordance with clarified rules governing these situations. To the extent Thomas S. Roseburg, B-188093, October 18, 1977, differs as to the significance of the nature of an employee's duties, it will no longer be followed.

Ms. Glenda Wilson, an authorized certifying officer with the Bureau of Land Management (BLM), United States Department of the Interior, has requested our opinion concerning the entitlement of Mr. Robert W. Arndorfer to reimbursement of travel and subsistence expenses associated with temporary duty he performed at his newly designated official duty station between the time he was notified of his transfer and the effective date of that transfer. We are remanding this case to the BLM so that it can make a determination of Mr. Arndorfer's entitlements in light of the following clarification of the rules governing this type of situation.

On June 8, 1983, while in Anchorage, Alaska, on temporary duty, Mr. Arndorfer was notified of his reassignment from a position with the BLM in Denver, Colorado, to the position of Deputy State Director in Anchorage. Mr. Arndorfer states that at that time he discussed his reporting date with the State Director and because he was to be on annual leave from August 15 through August 26 for his son's wedding, they agreed that he would report on September 6. Apparently, the State Director then

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requested Mr. Arndorfer's assistance in preparing for a series of Congressional and Secretarial briefings scheduled for mid to late August, and they agreed he would return to Anchorage for the first 2 weeks in August. It is not clear when Mr. Arndorfer returned to Denver, but he reports that he signed an employment agreement in Denver on June 30, and that his transfer of station authorization was signed on July 15.

Mr. Arndorfer flew from Denver on July 29, with a stopover in Portland, and arrived in Anchorage in the late afternoon of July 31. During the following 2 weeks Mr. Arndorfer performed duties in Anchorage and also traveled from Anchorage to Juneau and to Fairbanks. On August 14 he left Anchorage for Portland, where his son was to be married, and was on annual leave until his return to Denver on August 27. Mr. Arndorfer reported to work in Denver on August 31 and for half a day on September 1 before driving to Anchorage.

The BLM denied Mr. Arndorfer's claim for per diem for the period from August 1 to August 14 on the basis that per diem expenses may not be allowed at a place where an employee is on temporary duty after he receives notification that it is to become his permanent duty station.

It is the general rule that payment of per diem is authorized only to employees on official travel away from their posts of duty (permanent duty stations). 5 U.S.C. § 5702(a) (1982) and paragraph 1-7.6 of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR). In keeping with this rule we have held that where an employee is transferred to a place at which he is already on temporary duty, the transfer is effective for per diem purposes on the date he receives notice of the transfer. 24 Comp. Gen. 593 (1945). If the employee is transferred to a place where he is not on temporary duty his transfer is effective on the date he actually arrives at his new station. 23 Comp. Gen. 342 (1943). If he has received definite notice of a permanent change of station prior to reporting for duty at the new station he is not entitled to per diem after he arrives at the new duty post. B-146031, July 11, 1961. We have recognized an exception to these situations where an employee performs a period or periods of temporary duty at his new official station between the time he receives his transfer orders and the stated effective date of those orders if such period or

periods of temporary duty are terminated by a return to the old station on official business. Walter A. Gilmore, B-205440, May 25, 1982, and cases cited therein.

The BLM states that Mr. Arndorfer's duty of 12 hours in Denver is not sufficient to enable him to come within the purview of these cases and cites John W. Corwine, B-203492, December 7, 1982, to support its position. In that case, an employee received definite notice prior to reporting for temporary duty that his temporary duty station was to become his permanent duty station. He returned to his old duty station for a day of official business but we held that his transfer was effective on the date that he arrived at the new duty station. It was not the brevity of his return but the totality of circumstances surrounding his transfer that led us to conclude that the employee had intended to transfer at the time he arrived for temporary duty. When he first arrived, he moved into rented quarters in which he lived for approximately 4 months. His wife and family joined him at those quarters only a few days after he reported and he did not return to his old duty station until 3 weeks after his initial reporting date. In the other case which the BLM cites to support its position, Neil E. Wernsing, B-199612, September 24, 1980, we denied reimbursement of per diem to an employee for duty performed at a location which he knew was to become his permanent duty station. In that case, however, the employee did not return to his old permanent duty station so it does not appear to have much application to the issue at hand.

Because per diem may be allowed only when an employee is away from his permanent duty station, the primary issue in these cases is whether the employee is actually performing temporary duty or whether he has, instead, effectively started his new permanent duty assignment. Whether an employee returns to his old duty station is

just one of the considerations involved in making this determination, albeit a preliminary one.^{1/}

We have said that the exception to the general rule applies only when the employee performs "substantial" duty upon his return to the old duty station. See Denny C. Eckenrode, B-194082, May 8, 1979, and Thomas S. Roseburg, B-188093, October 18, 1977. But we have allowed per diem for a period of temporary duty even when the employee's return to the old duty station is for a brief period. For example, in John F. Curley, B-190107, February 8, 1978, the employee involved was transferred from New York, New York, to Boston by a travel order dated June 16, 1977, with an effective date of July 3, 1977. He performed temporary duty in Boston from June 12 through 16, 1977; June 22 through 25, 1977; and June 29 and 30, 1977, returning to New York following the last two temporary duty assignments. And in 51 Comp. Gen. 10 (1971), we allowed per diem to an employee who performed 2 days of work at his old permanent duty station. The employee, stationed in Chicago with the Office of Economic Opportunity, was notified of his selection as Regional Director of the Boston office and subsequently began a period of temporary duty in Boston. After completing his temporary duty he returned to and was on duty in Chicago on a Friday, went to Boston on a househunting trip lasting from Sunday through Thursday, again returned to and was on duty in Chicago on Friday, was on leave for the following Monday through Wednesday, attended a Regional Directors' meeting in Denver from Wednesday to Friday, and on the following Monday reported for duty in Boston.

In each of those cases we held that the employee's transfer was effective on the day he returned to his new duty station to stay rather than on the day he reported for temporary duty because it had been expected that upon completion of the temporary duty the employee would return to his old permanent station for official duty. Thus, the examination of an employee's return to his old official

^{1/} But see B-176857, December 22, 1972, where we allowed per diem to an employee for temporary duty at a location which he knew was to be his new permanent duty station even though he did not return to his old duty station. The record showed that it was originally contemplated that he would return but he was unable to due to an unexpected workload.

station should include consideration of whether it was expected that he would return, and, as evidenced by our decision in John W. Corwine, whether the employee took steps to effect his transfer prior to his return.

It is not only the nature of an employee's return to his old permanent duty station which must be considered. Several factors which we have long held are important in determining the location of an employee's permanent duty station for purposes of per diem entitlement must also be examined. These factors are the orders directing the assignment and, most importantly, the nature of the duties assigned and their duration. See Peter J. Dispenzirie, B-210244, July 13, 1983.

We note that Mr. Arndorfer has argued that his 2 weeks of duty in Anchorage should be considered temporary duty because the duties he performed during that period were outside the scope of his new assignment. The BLM has not made any finding concerning the nature of Mr. Arndorfer's duties but instead contends that the nature of the duties is immaterial in these cases. We note that a statement to that effect appears in Thomas S. Roseburg, cited earlier. We have always examined the nature of employee's duties, however, when determining whether an assignment is temporary or permanent. See Peter J. Dispenzirie, cited earlier. In B-135690, May 8, 1958, for example, we based our allowance of per diem for temporary duty, performed at a newly assigned permanent duty station, in large part on the fact that the duties the employee performed during his temporary duty, even while at the new permanent duty station, were clearly those of his previous position. To the extent that Roseburg differs we will no longer follow it.

The purpose of examining the nature of an employee's return to his permanent duty station, the nature of the orders directing his assignment, and the duties involved in the assignment and their duration is to determine whether the duty at the newly assigned permanent duty station is an integral part of the new assignment so as to make the payment of per diem inappropriate, or whether the duty is distinct from the new assignment and can be legitimately classified as temporary duty.

We are remanding this case to the BLM so that it can make this determination after considering all of these

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factors but particularly the nature of the duties
Mr. Arndorfer was performing in Anchorage.

for 
Comptroller General
of the United States