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DECISION



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

FILE: B-216431

DATE: July 5, 1985

MATTER OF: Ronald C. Briggs

- DIGEST:**
1. An employee may not elect to receive per diem for the duration of an Intergovernmental Personnel Act assignment where his agency's determination to authorize change-of-station allowances is reflected in his travel orders and his Intergovernmental Personnel Act Agreement. Under 5 U.S.C. § 3375, an agency may authorize change-of-station allowances or per diem, but not both, and we have held that per diem would ordinarily be inappropriate for Intergovernmental Personnel Act assignments of 2 years.
 2. The change-of-station allowances authorized by 5 U.S.C. § 3375 are payable upon relocation to, as well as return from, an Intergovernmental Personnel Act assignment. The fact that an employee's family was residing at the location of his assignment and that the full range of allowances, therefore, was not authorized when the employee reported to the university does not preclude payment of any or all of those allowances incident to the employee's return following completion of the assignment. There is no statutory or regulatory requirement that the employee be authorized or incur specific expenses in reporting to the Intergovernmental Personnel Act assignment as a condition to paying those expenses upon its termination.

This action is in response to a request for an advance decision from the Department of the Interior regarding the claim of Ronald C. Briggs for per diem and relocation allowances in connection with an Intergovernmental Personnel Act assignment.^{1/} We find that per diem may not be paid for the 2-year period of Mr. Briggs' assignment, but that relocation expenses claimed in connection with his family's return following completion of the assignment may be allowed.

^{1/} The request was made by Gary K. Dragseth, Acting Chief, Division of Finance, Bureau of Mines, Department of the Interior, Denver, Colorado.

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Mr. Briggs, an employee of the Bureau of Mines, Department of the Interior, was stationed in Twin Cities, Minnesota. In September 1979 Mr. Briggs was transferred to Washington, D.C. In connection with that transfer he was authorized relocation expenses, including residence sale and purchase expenses as well as travel expenses for members of his immediate family. Although Mr. Briggs moved to Washington and reported to his new duty station at that time, his dependents remained in Minnesota in the family residence.

The employee had not sold his Minnesota residence nor moved his family to Washington by July 1980 when he was offered and accepted a 2-year assignment at the University of Minnesota under the Intergovernmental Personnel Act. Since his family remained in their Minnesota residence, Mr. Briggs' travel order authorized only expenses for his own travel to the university and a miscellaneous expenses allowance. The Bureau subsequently determined that miscellaneous expenses could not be paid since 5 U.S.C. § 3375(a)(5) limits the allowance to those Intergovernmental Personnel Act assignments involving movement or storage of household goods. While at the university, Mr. Briggs stayed in the family home.

When the assignment was terminated in August 1982, Mr. Briggs was issued a travel order providing, among other allowances, for transportation of his household goods and travel of his immediate family from Minnesota to Washington, D.C. By that time, the 2-year period within which he had been authorized to incur residence transaction expenses incident to his 1979 transfer had expired. Because residence transaction expenses are not payable in connection with assignment to or return from an Intergovernmental Personnel Act location, Mr. Briggs' orders for return to Washington did not authorize reimbursement of real estate sale or purchase costs.

Although Mr. Briggs has indicated that he accepted the Intergovernmental Personnel Act assignment under a misapprehension regarding his eligibility for reimbursement of residence transaction expenses upon return to Washington, he does not question the Bureau's refusal to authorize these expenses. However, he has now submitted a claim for per diem in the amount of \$16,974 for the 738 days he was assigned to the University of Minnesota. The Bureau of Mines asks whether it may pay his claim, based on a per diem rate of \$23 a day, for the period during which Mr. Briggs stayed in his family's Minnesota residence. The Bureau has also raised questions

concerning Mr. Briggs' claim for expenses incurred in relocating his family to Washington after termination of the Intergovernmental Personnel Act assignment. This claim has not been paid pending our determination as to Mr. Briggs' per diem entitlement and because of doubt as to whether certain allowances, including travel and temporary quarters subsistence expenses, may be paid for dependents who participated only in the employee's return from the Intergovernmental Personnel Act assignment.

Statutory authority for transfer or assignment of an employee under the Intergovernmental Personnel Act is found at 5 U.S.C. § 3371 *et seq.* Under section 3372, an employee may be given an assignment not to exceed 2 years, which may be extended for an additional 2 years by the head of the Federal agency. Expenses, including per diem, for the employee's travel to and from the Intergovernmental Personnel Act assignment are payable under 5 U.S.C. § 3375(a)(1). In addition, that subsection makes funds available to pay a per diem allowance to an employee while at the location of the Intergovernmental Personnel Act assignment. Under subsections 3375(2) through (6) certain expenses ordinarily associated with permanent changes of station may be paid. These include travel and transportation for members of the employee's immediate family, transportation and storage of household goods, temporary quarters subsistence expenses, and a miscellaneous expenses allowance payable when movement of household goods is involved. These particular expenses are payable in connection with assignment to the Intergovernmental Personnel Act location as well as upon return to the employee's regular duty assignment.

We have held that Federal employees who are assigned to state and local governments and to institutions of higher education under the Intergovernmental Personnel Act may not be paid per diem at the Intergovernmental Personnel Act location and change-of-station type allowances incident to the same assignment. 53 Comp. Gen. 81 (1973). Consistent with that holding, employees assigned under the Intergovernmental Personnel Act may receive either per diem or change-of-station allowances, but not both. The agency is responsible for determining whether to authorize change-of-station or per diem allowances and we have authorized reimbursement based on the employee's own election only in those cases where the travel order authorizing payment was ambiguous on its face. Arthur G. Alexiou, B-183797, May 11, 1979.

In the present case, Mr. Briggs was authorized change-of-station rather than per diem expenses incident to his assignment to the University of Minnesota and he was authorized change-of-station allowances in connection with his reassignment to Washington upon termination of the Intergovernmental Personnel Act assignment. Although limited allowances were authorized for relocation to the Intergovernmental Personnel Act location because there was no need to relocate Mr. Briggs' household, there is no ambiguity on the face of either order and there is no doubt as to the Bureau's determination to authorize change-of-station allowances in both instances. That determination is also apparent from the terms of the Intergovernmental Personnel Act Agreement executed by Mr. Briggs which specifically states that the Bureau will pay "authorized travel expenses to and from the assignment, plus allowable relocation expenses."

The Bureau of Mines' determination to authorize change-of-station allowances is consistent with our holding that payment of per diem would ordinarily be inappropriate for Intergovernmental Personnel Act assignments of 2 years. William T. Burke, B-207447, June 30, 1983. That holding is now reflected in the following guidance provided by the Office of Personnel Management for Intergovernmental Personnel Act assignments:

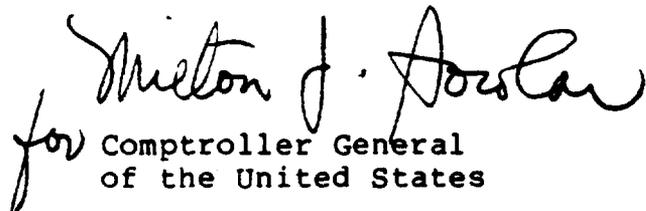
"b. Agencies are authorized to pay for either relocation expenses to and from the assignment location or a per diem allowance at the assignment location during the period of assignment. The agency may select either of these approaches to relocation and living expenses but cannot pay both types of costs. The cost to the government should be a major factor taken into account when determining which approach will be used. A per diem allowance at the assignment location is intended for short term assignments and not for longer assignments. Per diem allowances should not be paid for more than one year."

Paragraph 1-7b, chapter 334, Federal Personnel Manual (Installment 310, December 1, 1983). Under these circumstances, Mr. Briggs may not now elect to receive per diem rather than change-of-station allowances.

Since Mr. Briggs was properly authorized change-of-station allowances, he is entitled to the expenses provided for by 5 U.S.C. §§ 3375(a)(2) through (6) to the extent they have been authorized or approved by the Bureau of Mines. These expenses are payable upon assignment to as well as return from an Intergovernmental Personnel Act location. However, there is no statutory or regulatory requirement that the employee be authorized or incur specific expenses in reporting to the assignment as a condition to paying those expenses upon its termination. Thus, the fact that Mr. Briggs' family was already residing at the Intergovernmental Personnel Act location at the commencement of his assignment does not preclude reimbursement for transportation of household goods and travel of family members upon its termination. Since these expenses are specifically provided for in his return travel order, they may be reimbursed insofar as otherwise proper.

Like other expenses of relocating an employee's household, temporary quarters subsistence expenses may be paid in connection with an employee's return from an Intergovernmental Personnel Act assignment without regard to whether such expenses were authorized or incurred in reporting to the assignment location. The travel order Mr. Briggs was issued upon termination of his assignment does not specifically authorize temporary quarters subsistence expenses. However, we have held that temporary quarters subsistence expenses may be retroactively approved. B-172018, April 21, 1971, and Andrew O. Davis, B-198062, June 23, 1981. Since Mr. Briggs' Intergovernmental Personnel Act Agreement specifically provides that the Bureau of Mines will pay "allowable relocation expenses" we would not object to its approval of Mr. Briggs' claim for temporary quarters subsistence expenses insofar as otherwise proper.

As indicated above, Mr. Briggs may be paid change-of-station allowance rather than the per diem allowance requested in connection with his Intergovernmental Personnel Act assignment to the University of Minnesota.


for Comptroller General
of the United States