



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Joseph J. Faszczka

File: B-251518

Date: May 26, 1993

DIGEST

Employee whose official duty station was Washington, DC, and whose residence is in Woodbridge, Virginia, was ordered to perform part of his duties as a security officer at three different sites in Virginia, and authorized to use his privately owned vehicle as advantageous to the government for this temporary duty. Under the provisions of Vol. 2, JTR para. C2153 (ch. 234, 4/1/85) and its succeeding provisions, he is entitled to reimbursement on a mileage basis for the distance traveled between his residence in Woodbridge, Virginia, and the alternate duty points in Virginia and return during this temporary duty period.

DECISION

Mr. Joseph J. Faszczka appeals our Claims Group's settlement which disallowed his claims for transportation expenses (a mileage allowance and tolls) while he was temporarily assigned to perform part of his duties as a security officer at three different sites in Virginia.¹ For the following reasons, we reverse our Claims Group's action, and allow his claims.

Mr. Faszczka, an employee of the Department of the Navy, was assigned as a security officer at the Naval Research Laboratory (NRL) in Washington, DC, his official duty station. In late August 1990, his immediate supervisor assigned him to perform temporary duty in Reston, Virginia, effective September 4, 1990. He was instructed to report directly to the temporary duty site in Reston from his residence and, since there was no reasonably direct public transportation link between his residence in Woodbridge, Virginia, and Reston, he was authorized to use his privately owned vehicle for that travel as being advantageous to the

¹Settlement Certificate Z-2868056, Nov. 6, 1992.

government. Mr. Faszczka's vouchers show that he performed intermittent temporary duty in Reston, Virginia, from September 4, 1990, until November 13, 1990. Then he performed intermittent temporary duty at one location in Fairfax County, Virginia, from November 19, 1990, until July 9, 1991, and at another location in Fairfax County, Virginia, from July 10, 1991, until December 19, 1991. Navy management officials above the level of Mr. Faszczka's immediate supervisor were aware of the orders which the immediate supervisor had given to Mr. Faszczka.²

At the time of this assignment, Mr. Faszczka's total temporary duty period was expected to last approximately 9 months. In late May 1991, his temporary duty assignment was extended for another 6 months until the end of December 1991. During this temporary duty period, Mr. Faszczka also worked at least 1 day in a week (and sometimes 2 or 3 days a week) at the NRL in Washington, DC, his official duty station. This pattern continued until December 29, 1991, when his official duty station was changed to Arlington, Virginia.³

In October 1990, Mr. Faszczka filed a voucher for travel (mileage and tolls) performed in September 1990 and for prior periods and was paid. In March 1991, he filed a voucher for his travel in October 1990 (\$268.50). On review, the Navy determined that, because his travel claim involved repeated travel from his residence in Woodbridge to Reston and return, and the period of duty was longer than 6 months, his assignment to Reston was a permanent duty assignment rather than a temporary duty assignment. As a result, on June 11, 1991, the Navy denied his claim for October 1990 and took action to recoup the \$143.89 paid him

²We note that on December 2, 1991, Mr. Faszczka's immediate supervisor confirmed, in writing, his previous oral orders and his determination that Mr. Faszczka's use of a privately owned conveyance was considered advantageous to the government. See the immediate supervisor's First Endorsement, dated December 2, 1991, on Mr. Faszczka's letter of November 26, 1991. In this regard, see 52 Comp. Gen. 236, 239 (1972) (allowing reimbursement for local travel performed under verbal orders which were later confirmed by competent authority).

³See Standard Form 50-B (SF-50-B) of Mr. Joseph J. Faszczka, dated December 30, 1991. We note that the effective date of this SF-50-B is listed as December 29, 1991. Furthermore, for administrative purposes, Mr. Faszczka's official duty station is listed as Arlington, Virginia, although he continued to actually work at the third temporary duty site in Virginia for some period of time afterwards.

for his travel in September 1990. On appeal, the Navy again denied his claim based on paragraph C4455-2 of Volume 2, Joint Travel Regulations (2 JTR) which limits temporary duty to 6 months unless a written justification is prepared and approved, and the Navy concluded that his assignment was a permanent duty assignment from the beginning. As a result, his travel was considered "home to work" travel and not reimbursable. On further appeal by Mr. Faszczka, his travel claims for September and October 1990 were submitted for review by our Claims Group, which sustained the Navy's denial and this appeal followed.

Mr. Faszczka argues that his duties at the Reston and Fairfax sites were temporary and the expectation was that he would return to his official station (NRL in Washington, DC) at the completion of that duty. He also argues that he was specifically authorized (and indeed required) to use his privately owned vehicle to travel to Reston and elsewhere from his residence in Woodbridge rather than travel to the NRL and then to his temporary duty sites. Further, he says that prior to December 1991 he was not informed that his assignment away from the NRL was a permanent duty assignment. Therefore, he contends that under the provisions of 2 JTR para. C2153 (ch. 234, April 1, 1985) and its succeeding provisions, he is entitled to transportation expenses (a mileage allowance for travel by car and tolls) between his residence in Woodbridge, Virginia, and his three temporary duty sites in Virginia for the days on which he performed temporary duty there during the period September 4, 1990, through December 19, 1991.⁴

According to Mr. Faszczka's travel vouchers, he traveled from his residence in Woodbridge to Reston, Virginia, and two separate locations in Fairfax, Virginia, approximately 211 times during the nearly 16-month period of September 4, 1990, to December 19, 1991. In this regard, we note that there is nothing of record to show that a determination was made to change his official duty station prior to December 1991. According to Mr. Faszczka, he had recommended that a position be established in Reston, Virginia, as early as December 1990. However, that recommendation did not become a formal request by higher authority until April 1991. Finally, Mr. Faszczka states that his permanent duty station was officially changed from the NRL in Washington, DC, only after the formal request for a new position in Reston, Virginia, was acted upon in November 1991.⁵

⁴During the period from Friday, December 20, 1991, through Friday, December 27, 1991, Mr. Faszczka was on annual leave, and thus there are no claims for that period.

⁵See 2 JTR para. C4455 (ch. 267, 1/1/88), quoted below.

Whether an assignment is temporary or permanent is a question of fact to be determined on the basis of the circumstances of each case. We have recognized that the orders directing the assignment, the character of the assignment, its duration, the nature of the duties performed and where applicable, the cost of transfer versus continued per diem payments are central to that determination. Edward W. DePiazza, 68 Comp. Gen. 465 (1989) and Dessauer and Wells, 68 Comp. Gen. 454 (1989). Notwithstanding the cost factor, we have approved payment of temporary duty allowances for assignments which have exceeded 1 year in appropriate cases. Edward W. DePiazza, supra, and Dessauer and Wells, supra.

The regulations governing prolonged temporary duty assignments for civilian employees of a military establishment which were in effect at the beginning of Mr. Faszczka's assignment on September 4, 1990, were those contained in 2 JTR para. C4455 (ch. 267, Jan. 1, 1988). That paragraph provided:

"When a period of temporary duty assignment at one place will exceed 2 months, consideration will be given to changing the employee's permanent duty station unless there is reason to expect the employee to return to his permanent duty station within 6 months from the date of initial assignment or the temporary duty expenses are warranted in comparison with permanent change-of-station movement expenses."

In the present case, as we have noted above, Mr. Faszczka traveled from his residence in Woodbridge to Reston, Virginia, and two separate locations in Fairfax, Virginia, for varying periods of time. The Reston assignment lasted approximately 2 months, and the two Fairfax assignments lasted approximately 8 months and 5 months, respectively. Moreover, he also continued to perform his duties at NRL in Washington, DC, usually at least 1 day a week (and sometimes 2 or 3 days a week) through this nearly 16-month period. Also, there is nothing of record to show that a determination was made to change his official duty station prior to

'The Navy's submission shows that it relied on 2 JTR para. C4455-2 (ch. 312, 10/1/91), which places a heavier burden on management officials in regard to the documentation necessary for maintaining an employee on temporary duty than the regulation quoted above. However, the provision relied on by the Navy was not in effect at the beginning of Mr. Faszczka's temporary duty, and indeed did not go into effect until October 1, 1991. Thus, it is not relevant to this case.

November 1991, and then the Navy did not make the change effective until December 29, 1991. Therefore, in view of all these factors, and our decisions cited above, we conclude that Mr. Faszczka's assignments to Reston and the two other separate locations in Fairfax, Virginia, constituted temporary duty.

With regard to an employee's reimbursement for use of a privately owned conveyance between an employee's place of abode and an alternate (temporary) duty point during the period of Mr. Faszczka's claim, paragraph C2153 of 2 JTR provided:

" . . . When use of a privately owned conveyance is authorized or approved as advantageous to the Government for travel between the employee's place of abode and an alternate duty point (a duty point within or outside the employee's permanent duty station other than his regular place of work), instead of reporting to his regular place of work and then to the alternate duty point, the employee is entitled to reimbursement on a mileage basis for the distance traveled between the employee's place of abode and the alternate duty point."⁷

We have held that this regulation allows no discretion, but mandates payment of a mileage allowance for the entire distance to an alternate duty point when travel begins at the employee's place of abode and the employee does not first travel to his regular place of work. Talmadge M. Gailey, 65 Comp. Gen. 127 (1985).⁸ Thus, Mr. Faszczka's travel vouchers for a mileage allowance and tolls for his period of temporary duty from September 4, 1990, to December 19, 1991, which are being returned to the Navy at this time, may be certified for payment, if otherwise correct.

We note that, effective for travel on or after December 1, 1991, the mileage regulation in question was amended to limit reimbursement to "the distance that exceeds the

⁷See 2 JTR para. C2153 (ch. 234, 4/1/85). On November 1, 1991, 2 JTR para. C2153 was marked "NOT USED." See 2 JTR para. C2153 (ch. 313, 11/1/91). However, the exact same text of the regulation quoted above was then transferred to 2 JTR para. C2401-3, (ch. 313, 11/1/91) (covering period from November 1 to November 30, 1991).

⁸The text of the regulation cited in Gailey is 2 JTR para. C2153 (ch. 212, 6/1/83), which was repeated verbatim by 2 JTR para. C2153 (ch. 234, 4/1/85), the regulation involved in the present case.

employee's commuting distance to the regular place of work and return." 2 JTR para. C2401-3 (ch. 315, 1/1/92).

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