



Comptroller General  
of the United States  
Washington, D.C. 20548

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## Decision

**Matter of:** Donald R. Del Balzo  
**File:** B-253504  
**Date:** February 14, 1994

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### DIGEST

The Department of the Navy issued an employee a 365-day temporary duty order for duty in Italy on the basis of a cost comparison which showed that temporary duty was less expensive than a permanent change of station. The Navy's action was based on then-existing agency policy guidance. The Navy subsequently questioned the validity of the temporary duty assignment in view of later-issued guidance on long-term temporary duty and retroactively revoked his temporary duty orders and converted them to permanent change-of-station orders. The well-established general rules are that legal rights and liabilities in regard to travel allowances vest as and when travel is performed under competent orders, and that such orders may not be revoked or modified retroactively so as to increase or decrease the rights and benefits which have become fixed under the applicable statutes and regulations. Therefore, the employee is not indebted to the Navy for the temporary duty expenses involved.

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### DECISION

Mr. Donald R. Del Balzo, an employee of the Department of the Navy has requested waiver of his indebtedness to the Navy resulting from the Navy's decision to retroactively change his original 365-day temporary duty assignment into a permanent change of station. Since we find that Mr. Del Balzo is not indebted to the Navy, we do not have to address the issue of waiver of erroneous payments under 5 U.S.C. § 5584 (1988).

We briefly summarize the voluminous record in this matter as follows. On or about July 14, 1988, Mr. Del Balzo received a travel order which authorized him to perform a 365-day temporary duty (TDY) assignment at the Naval Air Station, Gaeta, Italy. Mr. Del Balzo began this assignment on

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<sup>1</sup>Travel Order No. N6846288TOM, dated July 14, 1988.

August 1, 1988. The determination that Mr. Del Balzo's orders should be for temporary duty rather than a permanent change of station (PCS) was made on the basis of a cost comparison which showed that TDY was substantially less expensive than PCS. Mr. Del Balzo subsequently received and legitimately expended travel advances for subsistence and car rental expenses. Mr. Del Balzo's actions, in this regard, were based on then existing agency policy guidance<sup>2</sup> and longstanding practice for his position.

As a result of a review of long-term TDY issues, and based on new policy guidance, the Navy decided in April 1989 that Mr. Del Balzo's assignment would be extended another year and converted prospectively to a permanent change of (PCS). The Navy then issued a permanent change of station order on June 7, 1989, effective on May 1, 1989.<sup>3</sup> His assignment was further extended in 1990 and he served in that assignment until Nov. 7, 1990.

After further review of Navy policy on long-term temporary duty assignments, the Navy decided by letter dated September 25, 1990, that "the proper course of action in this case is a change in the effective date of Mr. Del Balzo's permanent change of station (PCS) to Italy from 1 May 1989 to 1 August 1988."<sup>4</sup> The reason given was that the initial assignment was identified erroneously as a temporary duty assignment when it should have been a permanent change of station from the very beginning. Amended travel orders to carry out this decision were later issued.<sup>5</sup>

As a result, the Navy determined that Mr. Del Balzo was only entitled to permanent change-of-station expenses and was not entitled to per diem and other TDY expenses. Since Mr. Del Balzo had received erroneous TDY travel payments, the Navy determined that he had been overpaid \$21,361.79, and the Navy has collected back \$7,911.41 of that amount.

It is well established that legal rights and liabilities in regard to travel allowances vest as and when travel is performed under competent orders, and that, in general, such orders may not be revoked or modified retroactively so as to increase or decrease the rights and benefits which have

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<sup>2</sup>See SPAWAR Instruction 12570.2 (May 13, 1989).

<sup>3</sup>Travel Order No. N6846289C10006, dated June 7, 1989.

<sup>4</sup>Letter from Chief of Naval Operations to Commanding Officer, Naval Oceanographic and Atmospheric Research Laboratory, dated Sept. 25, 1990.

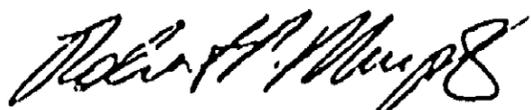
<sup>5</sup>Travel Order No. (illegible), dated May 24, 1991.

become fixed under the applicable statutes and regulations. Jerrold Schroeder, B-226868, May 19, 1989, reconsidering and affirming, B-226868, Nov. 4, 1988; Steve W. Frederick, B-217630, July 25, 1985; Dr. Sigmund Fritz, 55 Comp. Gen. 1241 (1976).<sup>6</sup>

Consistent with this rule, we have held that permanent change-of-station orders may not be canceled after the travel and transportation activities required to complete the permanent move have been accomplished, and since the original orders were not clearly erroneous, the agency's redetermination 4 years after the fact that the transfer had not been in the best interest of the government could not be given effect. Steve W. Frederick, B-217630, July 25, 1985. Vernon E. Adler, B-204210, Apr. 5, 1982. By the same token, it is clear that temporary duty orders may not be retroactively canceled after travel has been performed.

In the instant case, the original determination that Mr. Del Balzo's assignment should be temporary duty rather than permanent change of station was made on the basis of a cost comparison between the two types of assignments in accord with then existing policy guidance and past practice. Thus, the record before us does not show that any material error was made when the orders were issued. Rather, the Navy has attempted to retroactively apply policy changes issued after Mr. Del Balzo's travel had been performed. Under the general rules against retroactively modifying or canceling travel orders set forth above, the revocation of the original TDY orders was erroneous. See Steve W. Frederick, B-217630, July 25, 1985.

Therefore, Mr. Del Balzo is not indebted to the Navy, and is entitled to be refunded his travel and other expenses which the Navy has erroneously collected back from him.



Robert P. Murphy  
Acting General Counsel

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<sup>6</sup>Exceptions to this general rule, which are clearly not applicable here, have been recognized, as the decisions cited above show, where such modifications are made within a reasonable time after the issuance of the basic orders to correct an error apparent on the face of the orders, or if all the facts and circumstances clearly demonstrate that some provision previously determined and definitely intended had been omitted through error or inadvertence in the preparation of the orders. See decisions cited in the text, above.