

Goddard
C.P.

DECISION



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

04649

FILE: B-131810

DATE: January 3, 1978

MATTER OF: Department of Agriculture Meat
Graders - Mileage

- DIGEST:
1. Department of Agriculture asks whether its meat graders must be paid mileage for travel during compensable hours of work under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, et seq. Section 5704 of title 5, United States Code, is the authority for granting employees mileage and the FLSA does not so provide. Moreover, the fact that an employee is on official business does not in itself, absent his agency's authorization, entitle him to mileage. However, since the agency has discretion to allow mileage, the Department of Agriculture may in the future allow its meat graders mileage when they visit one duty site a day, but payments of mileage for past travel are governed by the policies of the Department then in effect which deny mileage for such travel.
 2. GAO is unaware of any authority in the law to allow payments to employees for storage of Government equipment which they transport between their homes and worksites. Therefore, storage payments may not be allowed.

The Honorable Carol Tucker Foreman, Assistant Secretary for Food and Consumer Services, Department of Agriculture, has requested our decision concerning the Department of Agriculture's authority to make mileage payments to meat graders of the Agricultural Marketing Service (AMS). Mr. Kenneth T. Blaylock, National President, American Federation of Government Employees, has written us regarding the Assistant Secretary's request and we have considered the points raised in his letter in rendering our decision.

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The Assistant Secretary states that the Civil Service Commission (CSC) ruled that time spent by meat graders transporting necessary meat grading equipment and supplies to and from work constituted "hours of work" under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, et seq. Accordingly, meat graders' claims for traveltime under such conditions were being processed for payment. The submission expresses uncertainty, however, as to whether employees entitled to traveltime pay under FLSA are also entitled to reimbursement for mileage in connection with such travel. The letter of submission reads in pertinent part:

"* * * The current Agency mileage policy, which does not consider the transportation of equipment as a justification for payment of mileage from home to work and back, provides for mileage reimbursement if work is performed at two or more locations each day within the normal commuting area. Employees are not entitled to mileage reimbursement if work is performed at only one location. This policy is based on your decision, 36 Comp. Gen. 795, where you ruled that the Agency has discretionary authority to establish mileage reimbursement when several locations are visited each day, but should give due consideration to the interest of both the government and the employee in establishing the mileage rate."

Accordingly, the Assistant Secretary asks, in light of the CSC's ruling concerning FLSA entitlements, whether the Department of Agriculture has the authority to pay mileage for travel from home to work and return when equipment and supplies are transported in situations where work is performed at only one location. If the Department does have such authority, we are asked if this authority is discretionary or would payment for mileage be retroactive to the date of the enactment of FLSA.

Mr. Blaylock, in presenting his position, states that meat graders should be paid mileage for all traveltime since the CSC has defined such time as "hours worked" and ordered the Department to pay the employees overtime. He states the travel is for the convenience of the Government. His letter reads in pertinent part:

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"In essence, even though there is no provision under FLSA for payment of mileage, we contend it must be compensable under Sec. 5704 of Title 5, USC and Paragraph 1-4.1 of The General Services Administration Federal Travel Regulations (FPMR 101-7)."

In addition, Mr. Blaylock requests that the employees be paid for storing the equipment they carry and he argues as follows:

"* * * These employees are required to carry with them at all times meat grading equipment necessary in the performance of their meat grading duties. They are responsible for the security of this expensive equipment and are required to carry it with them in their private automobiles under lock and key at the request of the government and for the convenience of the government.

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"* * * these employees should be paid for storage of government equipment. If they don't keep it in their cars, they must transfer it to their homes upon completion of their duty assignment each day and reload it upon starting out the next day. As stated previously, they have full responsibility for it. If anything happens to it they are subject to disciplinary action."

An employee's entitlement to mileage is governed solely by 5 U.S.C. § 5704 (1970), as amended by Public Law 94-22, approved May 19, 1975. Section 5704 states in pertinent part:

"(a) Under regulations prescribed under section 5707 of this title, an employee who is engaged on official business for the Government is entitled to not in excess of--

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"(2) 20 cents a mile for the use of a privately owned automobile * * *.

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"* * *instead of actual expenses of transportation when that mode of transportation is authorized or approved as more advantageous to the Government. A determination of such advantage is not required when payment on a mileage basis is limited to the cost of travel by common carrier including per diem. Notwithstanding the preceding provisions of this subsection, in any case in which an employee who is engaged in official business for the Government chooses to use a privately owned vehicle in lieu of a Government vehicle, payment on a mileage basis is limited to the cost of travel by a Government vehicle."

The regulation implementing the above is found at paragraph 1-4.1 of the Federal Travel Regulations (FPMR 101-7). It states in pertinent part:

"1-4.1. Basic rules.

"a. Mileage payments. When employees and others rendering service to the Government use privately owned motor vehicles or airplanes in the conduct of official business within or outside their designated posts of duty or places of service and such use is authorized or approved as advantageous to the Government or as an authorized or approved exercise of the employee's preference, payment shall be made on a mileage basis unless payment on an actual expense basis is specifically authorized by law."

Prior to the issuance of the above regulation, an identical or similar provision was contained in the Standardized Government Travel Regulations, Office of Management and Budget (OMB) Circular No. A-7. See, for example, section 4.1 of OMB Circular No. A-7 as revised effective October 10, 1971.

The provisions of FLSA which concern hours of work do not address the question of mileage. Rather, 5 U.S.C. § 5704 and the implementing regulations are the sole basis for paying

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employees' mileage. Accordingly, the ruling of CSC concerning hours of work under FLSA has no application to the mileage entitlements of the AMS meat graders.

Moreover, in decision 36 Comp. Gen. 795 (1957), cited by the Assistant Secretary, we held that:

"* * * as a general rule * * * where an officer or employee is properly authorized to use a privately-owned automobile for official business, it is within administrative discretion to allow him mileage from whatever point he begins his journey with no requirement that there be deducted from the computation of such mileage the distance that the employee would normally travel between his home and his headquarters, irrespective of whether he performs duty on that day within or without the corporate limits of his headquarters' city or at his headquarters office. * * *"

It is clear from this decision that the fact that an employee is traveling on official business does not in itself entitle the employee to mileage unless his agency exercises its discretion to authorize him mileage. 52 Comp. Gen. 446, 451 (1973). Accordingly, Mr. Blaylock's request that mileage must, as a matter of course, be paid for travel which is compensable under FLSA cannot be allowed in view of the fact that agencies have certain discretion whether to allow mileage or not when the employee is on official business. In addition, we are unaware of any authority in the law to allow payments for storage of the inspectors' equipment. Such payments could not be allowed in the absence of specific legislation.

As indicated above there is no requirement in the statute or the FTR that mileage payments must be made when the employees travel between their homes and their worksites and transport Government equipment and supplies. However, since the travel involves official business, it is within the discretion of the Department to authorize mileage. B-175608, December 28, 1973, 48 Comp. Gen. 718 (1967); 45 id. 197 (1965); 36 id. 795 (1957).

In addition, 36 Comp. Gen. 795, supra, does not limit an agency's authority to make mileage payments to only those situations where an employee travels to more than one temporary


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duty location on a given day. See also B-178759, March 12, 1975. The limitation on an agency's authority to allow for mileage payments has been stated in Matter of Gilbert C. Morgan, 55 Comp. Gen. 1323 (1976) at page 1328, as follows:

"* * *An agency may authorize or approve mileage payments for official travel close to or within the limits of the official duty station, except for travel from the employee's residence to his official headquarters."

Accordingly, other than allowing mileage for travel from his residence to official headquarters, an employee's entitlement to mileage for travel, whether to one or more duty sites in a day and whether equipment is transported or not, is governed by such regulations as an agency prescribes, giving due consideration to the interests of the Government and the employee.

Therefore, the Department of Agriculture has authority to pay mileage for home to work and return travel where equipment is transported and where the travel is to only one duty site which is not the employee's headquarters. Whether the Department must pay mileage for such travel, however depends upon what the actual policy of the Department is at the time the travel is performed. The record shows that the Department did not in fact have a policy of paying mileage to employees traveling to only one worksite during the period in question. Rather, mileage appears to have been limited to cases where employees traveled to two or more duty sites regardless of whether they carried equipment and supplies. These policies bind the Department of Agriculture as to travel performed in the past. The Department, however, may amend its policy in the future and authorize mileage payments consistent with the above.


Deputy Comptroller General-
of the United States