

5707
DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20348**

FILE: B-186436

DATE: March 15, 1978

MATTER OF: Linden Kelly - Remote Duty Station Allowance

SUMMARY: Allowance under 5 U.S.C. 5942 (1976) is payable for dates employee commuted round trip between his residence in Las Vegas and his permanent duty station at the Nevada Test Site (NTS). Since employee rented a room at NTS on a continuous basis, 5 C.F.R. 591.306(c) precludes payments for dates he remained overnight at NTS, except that he may be paid a single allowance for the round trip from Las Vegas required for each period of temporary residence at NTS.

This is in response to a request from Mr. D. K. Parker, a certifying officer, for a decision regarding the propriety of official station allowance (OSA) payments made to Mr. Linden Kelly, an employee of the Energy Research and Development Administration (ERDA), now part of the Department of Energy (DOE).

Mr. Kelly has been employed by DOE and its predecessors, ERDA and the Atomic Energy Commission, since August 1, 1975, with his permanent duty station at the Nevada Test Site (NTS). While maintaining permanent residence in Las Vegas since June 1, 1968, Mr. Kelly also rents a room at Mercury, Nevada, within NTS, on a continuous basis for his own personal convenience. Apparently he utilizes his room at Mercury during nights he is required to work late at NTS and on nights when he has to work at NTS the following day. Mr. Kelly has had the room at Mercury since August 21, 1973, and from that date through April 15, 1976, he received OSA payments for the following dates: (1) those dates on which he commuted from Las Vegas to NTS and back again, (2) those dates on which he commuted either from or to Las Vegas and stayed at NTS either the following or preceding night, and (3) those dates for which there was an operational necessity to be at his duty station outside of the established work day. No records exist which distinguish the first two categories. The OSA payments to Mr. Kelly for dates after April 15, 1976, have been suspended pending our decision in this case.

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The official station allowance is authorized by Public Law 91-656, section 6(a), January 8, 1971, codified at 5 U.S.C. 5942 (1976), which provides in pertinent part as follows:

"* * * /An/ employee of an Executive department or an independent establishment who is assigned to duty, except temporary duty, at a site so remote from the nearest established communities or suitable places of residence as to require an appreciable degree of expense, hardship, and inconvenience, beyond that normally encountered in metropolitan commuting, on the part of the employee in commuting to and from his residence and such worksite, is entitled, in addition to pay otherwise due him, to an allowance of not to exceed \$10 a day. The allowance shall be paid under regulations prescribed by the President establishing the rates at which the allowance will be paid and defining and designating those sites, areas, and groups of positions to which the rates apply."

The authority to prescribe regulations under 5 U.S.C. 5942 was delegated to the Civil Service Commission (CSC) by Executive Order No. 11609. The Commission's implementing regulations appear in 5 C.F.R. chapter 1, Subpart C (1977). The CSC guidelines are found in Federal Personnel Manual Supplement 990-2, Book 591 (FPM 990-2), subchapter S3 (August 2, 1973).

Prior to 1971, Public Law 89-383, March 31, 1966, 80 Stat. 98, authorized payment of an allowance not to exceed \$10 per day to employees permanently assigned to NTS. The then implementing regulations, Bureau of the Budget Circular No. A-77, dated June 9, 1966, set the rate at \$5 for workers assigned to Mercury and \$7.50 for employees assigned to other locations within NTS. These rates have

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been adopted for the purpose of Public Law 91-656 by 5 C.F.R. 591.310. An employee's eligibility to OSA must be determined under CSC regulations and guidelines.

Section 591.306(c) of 5 C.F.R. provides:

"An employee who resides permanently or temporarily for his own convenience at a remote duty post is not eligible for an authorized allowance rate during his period of residence."

An employee who temporarily resides at a remote duty post for his own convenience makes only one commuting round-trip per each period of residence, and, therefore, is only entitled to one allowance for that travel. Payment should be based on the date the employee travels to the remote post of duty. FPM 990-2, subchapter S3-7.b(1). Such an employee is not entitled to dual OSA payments for date of arrival and date of departure because that would be tantamount to payment of an allowance during a period of temporary residence for the employee's own convenience.

It is a fair inference that Mr. Kelly did not commute daily on contiguous dates he was required to work at NTS, but that he stayed at his temporary Mercury residence. Accordingly, he was and is not eligible for payment of an allowance for contiguous dates after his arrival at NTS.

The record indicates that some of the dates for which Mr. Kelly received an allowance were dates he stayed overnight at NTS, but was required to stay at his duty station outside of the established workday because of an operational necessity. In this regard, 5 C.F.R. 591.307(f) provides:

"An employee, who normally commutes on a daily basis, will not be disqualified from receiving an authorized allowance when he is officially required to remain overnight at the remote duty post, for one or more days on a temporary basis, because of the schedule of operations or the nature of assigned work."

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It is necessary to examine the relationship of this provision to 5 C.F.R. 591.306(c) already discussed. Section 591.306 describes the requisites of employee eligibility for an allowance, whereas the provisions listed under section 591.307 concern payment and the basis for payment of an allowance. As a rule, there can be no basis for payment unless an employee meets the eligibility requirements of section 591.306. Section 591.307(f) is an exception in that it specifically provides for payment of an allowance to an employee officially required to remain overnight at the remote duty station because of operational demands. This provision does not authorize payment regardless of the eligibility requirements of section 591.306. Rather, it contains language which keys into one particular eligibility requirement, section 591.306(a), and permits payment which that requirement would preclude otherwise. Section 591.306(a) provides in pertinent part:

"An authorized allowance * * * shall be paid to each employee with a permanent duty station at or within a remote post of duty * * * only (1) when the employee travels the prescribed minimum distance and time, or is subject to prescribed minimum inconvenience or hardship factors, while commuting from the nearest established community or suitable place of residence and the remote duty post * * *."

The language of section 591.307(f) regarding an employee "who normally commutes on a daily basis" refers to section 591.306(a)(1) and serves to erase employee ineligibility under that section. Section 591.307(f) does not remedy employee ineligibility under any other provision of section 591.306.

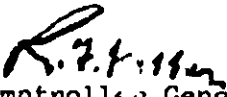
Under section 591.306(c) an employee, who resides at the remote duty post either permanently or temporarily for his own convenience, is not eligible for an allowance during his period of residence, notwithstanding section 591.307(f). The rationale for this is clear. 5 U.S.C. 5942 authorizes an allowance for the expense, hardship, and inconvenience beyond that normally encountered in a metropolitan community. Section 591.307(f) is intended to provide an

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allowance when an employee will incur additional expenses for lodging because he is required to stay overnight at the remote duty post. On the other hand, an employee who already maintains a residence, permanently or temporarily for his own convenience, at the remote duty post will not incur additional expenses for lodging as a result of being required to stay overnight. Therefore, section 591.306(c) precludes payment in the latter case.

Accordingly, since Mr. Kelly rents a room at Mercury for his own convenience on a continuous basis, his period of temporary residence under 5 C.F.R. 591.306(c) must be viewed as including any date he spends the night or previous night at NTS, except for date of arrival at NTS, as already discussed.

Mr. Kelly's entitlement to OSA should be determined in a manner consistent with this decision. In conclusion, we note that any claims of the United States against Mr. Kelly, resulting from OSA overpayments would appear to be eligible for consideration of waiver under the provisions of 5 U.S.C. 5584 (1976).


Deputy Comptroller General
of the United States