

DOCUMENT RESUME

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[Consultant's Entitlement to Travel and per Diem Payments].
B-191330. December 4, 1978. 4 pp.

Decision re: Andrew Paretti; by Robert F. Keller, Deputy
Comptroller General.

Contact: Office of the General Counsel: Personnel Law Matters
II.

Organization Concerned: Environmental Protection Agency.

Authority: 5 U.S.C. 5703. 5 U.S.C. 3109(b). 35 Comp. Gen. 90. 36
Comp. Gen. 450. 32 Comp. Gen. 235. B-187389 (1978). E-180698
(1974). B-180181 (1974).

An advance decision was requested as to whether a consultant may be paid for travel from his residence to his duty station and for per diem at his duty station for a certain period. As a temporary consultant, he was required to bear the cost of transportation from his place of residence to his official station. His later appointment as an intermittent consultant did not necessarily change the character of employment which determined whether he was entitled to payment. However, since the record concerning the nature of his employment was not clear, refund of payments should not be required for the period involved. (HTW)

DECISION

J. D. Mosher, P.M.
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

8526

FILE: B-191330

DATE: December 4, 1978

MATTER OF: Andrew Paretti - Temporary or intermittent consultant

- DIGEST:
1. A temporary consultant of Environmental Protection Agency is not entitled to payment of travel expenses from residence in Cedar Grove, New Jersey, to duty station in Washington, D.C., nor to payment of per diem while on duty at Washington, D.C. Under temporary appointment, consultant must bear cost of transportation from place of residence to official station.
 2. Appointment as intermittent consultant immediately following service as a temporary consultant does not necessarily change character of employment. It is the actual nature of employment that is determinative of its character as well as his entitlement to transportation and per diem expenses.

By letter dated February 15, 1978, an advance decision was requested as to whether several claims for travel expenses of Andrew Paretti, a consultant with the Environmental Protection Agency (EPA) may be paid under the circumstances described.

The record shows that Mr. Andrew Paretti was first employed as a temporary consultant for a period not to exceed 1 year beginning May 2, 1974. During this period he was paid for travel to and from his residence in Cedar Grove, New Jersey, and per diem at his duty station, Washington, D.C., in the amount of \$7,105.68. On May 2, 1975, Mr. Paretti was given another 1-year appointment as a temporary consultant. Travel between home and duty station and per diem at his duty station were neither authorized nor paid during this period. On May 3, 1976, he was appointed as an intermittent consultant. Again on May 3, 1977, he was appointed as an intermittent consultant for another 1-year period. During the period May 2, 1976, through September 3, 1976, Mr. Paretti was paid \$1,666.30 for travel expenses between home and duty station and per diem while at his duty station. Subsequent to September 3, 1976, similar travel and per diem payments have not been made.

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Mr. Paretti has been billed for both the \$7,105.68 paid in 1974-1975 and the \$1,666.30 paid in 1976 for a total of \$8,771.98. The question presented is whether contrary to the determination of EPA Mr. Paretti was entitled to be paid for travel allowance from his residence to his duty station and per diem at his duty station during these periods.

It is the contention of Mr. Paretti that since his travel arrangements for the periods in question were authorized and approved by officials of EPA and since he was briefed by EPA officials on how to prepare travel vouchers for travel under this type of arrangement, he should not be required to refund the payments made.

The appointment of experts and consultants is authorized by 5 U.S.C. 3109(b) (1976) and provides in part as follows:

"(b) When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof * * *."

Payment of transportation expenses and a per diem allowance for experts and consultants serving under an intermittent appointment is authorized by 5 U.S.C. 5703 as follows:

"An employee serving intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis, or serving without pay or at \$1 a year, may be allowed travel or transportation expenses, under this subchapter, while away from his home or regular place of business and at the place of employment or service."

The term "employed intermittently", as used in the statute and implementing regulations, has been construed by decisions of this Office to refer to occasional or irregular employment, as distinguished from continuous employment and is limited to work on programs, projects, or problems requiring intermittent services. 35 Comp. Gen. 90 (1955). There is no authority similar to 5 U.S.C. 5703, supra, for the payment of travel and per diem

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expenses of an expert or consultant who is employed on a temporary basis. The travel expense entitlement of an expert or consultant employed on a temporary basis is the same as a regular Government employee who is only entitled to travel and per diem expenses when on official business away from his duty station. A temporarily employed expert or consultant, just as a permanently employed individual, is subject to the well-settled rule that an employee must bear the cost of transportation from his place of residence to his place of duty at his official station. 36 Comp. Gen. 450 (1956); 32 Comp. Gen. 235 (1952); B-187389, July 19, 1978; B-180698, August 19, 1974; and B-180181, February 22, 1974. Thus Mr. Paretti's entitlement to travel and per diem expenses in connection with his travel between his residence and his place of work and to per diem while in Washington, D.C., as a consultant turns upon whether he served on an intermittent or temporary basis.

Mr. Paretti's appointment during the first period in question was designated as temporary and there is no indication that he served on any other basis during that period. Accordingly he was not entitled to travel at Government expense between his home and Washington, D.C., or to per diem in Washington during that period of employment. Further, it is the actual nature of his employment that is determinative of its character as well as his entitlement to transportation and per diem expenses. 35 Comp. Gen. 90 (1955); and B-180698, supra.


Regarding the second and third periods of employment EPA has concluded that Mr. Paretti was, in fact, a temporary consultant from May 2, 1974, until at least September 3, 1976. EPA reached its conclusion notwithstanding the employment designations on the personnel actions, and the fact that work performed under the May 1, 1976 intermittent appointment did not exceed 130 days in 1 year. A primary reason for the EPA determination was the fact that he worked an average of 63 hours of a possible 80 hours during each pay period under the May 1, 1976 appointment. Thus, the agency correctly recognized that although a consultant works less than 130 days in a year he still may be a "temporary" consultant.

Although there clearly is a basis for the EPA determination that Mr. Paretti's service was to be characterized as temporary rather than intermittent during that period, the record before us

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- is too doubtful for our Office to hold that he should be retroactively placed in that category so as to require refund of the travel and per diem payments received.

Accordingly, Mr. Paretti should not be required to refund travel and per diem payments he received for the period May 2 to September 3, 1976. Further, since it appears that the administrative action to characterize his service as temporary was not taken until December 1976, vouchers for travel between his home and duty station which were pending approval at that time may be allowed as an offset against his debt for travel payments under the temporary appointment of May 2, 1975.


Deputy Comptroller General
of the United States