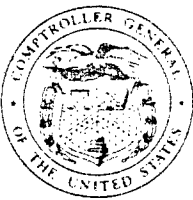


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**DECISION**



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

10, 204

FILE: B-193170

DATE: May 16, 1979

MATTER OF: Hector Avila Morales, Jr. - [Intermittent  
Consultant  Commuting Expenses]

DIGEST: Intermittent consultant is entitled to travel expenses between residence and official duty station and per diem while on duty there under 5 U.S.C. § 5703. Actual irregular employment rather than formal appointment designation determines whether consultant is intermittent employee. But agency intent to have consultant work occasionally without regularly scheduled 40-hour week may result in intermittent employment status, even though for relatively short period the consultant was required because of unexpected heavy workload to work 40 hours weekly.

PN

This decision answers Mr. R. J. White, Certifying Officer, Community Services Administration, who asks whether a consultant, Mr. Hector Avila Morales, Jr., may be regarded as an intermittent consultant and entitled to travel expenses between his residence and official duty station in Washington, D.C., and to per diem while on official duty at Washington.

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The Community Services Administration appointed Mr. Morales to the position of intermittent consultant effective June 13, 1977, for a period not to exceed 100 days. His consultant status terminated September 30, 1977, when he was converted under an excepted appointment to a permanent position at grade level GS-15. For the period he served as a consultant, Mr. Morales was almost continuously in a travel status visiting the Community Services Administration's regional offices and its Washington, D.C., headquarters. Concerning Mr. Morales' claim, on a number of occasions he traveled to and from these duty stations and his home in Tucson, Arizona.

Despite his intermittent consultant appointment, Mr. Morales was ordinarily paid for working a 40-hour week between June 13 and October 30, 1977. Because of his 40-hour week the certifying officer questions his entitlement to travel expenses between his

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Tucson home and official duty station, Washington, D.C., and per diem while on duty there. Payment has been made by the agency for such items for the period June 11 to August 3, 1977. The certifying officer's question relates to the same items for the period August 7 to September 29, 1977.

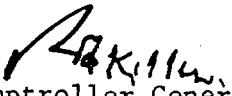
Mr. Laird F. Harris, Director, Office of Regional Operations, Community Services Administration, submitted to us a statement saying that he was the official responsible for directing and monitoring the work of Mr. Morales and that it was the intent of the Community Services Administration to have him work intermittently. Mr. Morales was not scheduled to work a regular 40-hour week, but the workload was heavier than anticipated, and he was required to work more continuously than expected when he was appointed as an intermittent consultant.

Under 5 U.S.C. § 5703 an intermittent expert or consultant may be allowed travel expenses while away from his home or regular place of business including per diem at his Federal work place. However, a temporary expert or consultant employed full-time, just as a permanently employed person, is subject to the well-settled rule that an employee must bear the cost of transportation between his place of residence and his official duty station. Additionally, no per diem may be allowed to a temporary consultant while at his official headquarters. 27 Comp. Gen. 695 (1948); 36 Comp. Gen. 450 (1956). If the employment is not actually occasional or irregular employment as distinguished from continuous employment, it cannot be regarded as intermittent employment even though the consultant is formally appointed to serve intermittently.

On the other hand we have recognized in certain cases that although an expert or consultant works full-time he may still be regarded as intermittent if the record shows that intermittent employment was actually intended and there was an inability to reasonably anticipate the need for the services on a full-time basis. B-110914, July 29, 1952; B-180698, August 19, 1974. While not free from doubt, this last situation reasonably may be viewed as covering Mr. Morales' case. Consequently, we offer no objection to Mr. Morales being considered an intermittent consultant.

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Accordingly, travel expenses may be allowed to and from Mr. Morales' home in Tucson, Arizona, and his duty stations and per diem at the duty stations if otherwise proper.

  
Deputy Comptroller General  
of the United States