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DECISION



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

FILE: B-204210

DATE: April 5, 1982

MATTER OF: Vernon E. Adler - Per Diem - Retroactive
Change of Travel Orders

DIGEST: A Foreign Service Officer who was transferred from Iran to Washington, D.C., requests that his travel orders be retroactively amended to change his permanent duty station to Warsaw, Poland, so that he could receive per diem allowances during his stay in Washington. He contends that it was the State Department's intention that he be assigned to another overseas post directly from Iran and that Washington was only a temporary duty site. His claim is denied since there is no clear indication of error in the record, and travel orders may not be modified retroactively so as to authorize a per diem allowance unless an error is apparent on the face of the order or facts indicate that an intended provision was omitted through error.

The issue in this case is whether the travel orders of Mr. Vernon E. Adler, a former State Department employee, may be retroactively amended to change his permanent duty station so as to allow him to receive per diem allowances. We have concluded that allowances are not payable because travel orders may not be revoked or modified retroactively so as to increase an employee's benefits unless an error is apparent or that which was previously intended has been omitted through error or inadvertence. The record before us does not clearly indicate such an error or inadvertence in not placing Mr. Adler in a temporary duty status while he was stationed in Washington, D.C.

An advance decision was requested by Dianne L. Ott, an authorized certifying officer, Office of Financial Operations, Department of State, questioning whether Mr. Adler's travel orders could be retroactively amended to change a permanent duty station to a temporary duty station.

Mr. Adler, a Foreign Service officer, was serving as the Science Attache at the U.S. Embassy in Tehran at the time of the domestic disturbances there, and was re-assigned on short notice to Washington, D.C., by a travel authorization dated January 10, 1979. Mr. Adler was transferred to Washington at both his and the Embassy's request. At that time, the Bureau of Oceans and International Environmental and Scientific Affairs (OES) suggested his temporary assignment to Washington, pending a possible overseas assignment in June 1979. Mr. Adler departed Tehran on January 12, 1979, and, while enroute to Washington, took a number of days annual leave. He entered on duty in Washington on January 23, 1979.

On February 2, 1979, OES nominated Mr. Adler to our Embassy in Warsaw for the position of Science Attache, and made arrangements for Mr. Adler to enter full-time Polish language training beginning February 5, 1979. Because of a delay in receipt of acceptance of Mr. Adler for the position by the Embassy, orders were not issued transferring him to Warsaw until March 27, 1979. Those orders provided for a direct transfer from Washington to Warsaw.

Mr. Adler and OES claim that it was intended that he would be assigned to another overseas post directly from Tehran, rather than be assigned to a tour in Washington. Mr. Adler believes that, because of this, his stay in Washington from his arrival on January 23 until his departure for Warsaw in August 1979, should have been in a temporary duty status. He requests that his original orders be changed to reflect only temporary duty in Washington rather than official assignment since this would entitle him to per diem during his stay in Washington.

The general rule is that travel orders may not be revoked or modified retroactively so as to increase or decrease the rights which have accrued or become fixed under the laws and regulations unless an error is apparent on the face of the orders, or all the facts and circumstances clearly demonstrate that some provision previously determined and definitely intended had been omitted through error or inadvertence in preparing the orders. 51 Comp. Gen. 736 (1972); 48 Comp. Gen. 119 (1968).

The record before us does not clearly indicate such an error or inadvertence in not placing Mr. Adler in a temporary duty status. In fact, there are discrepancies in the record. A letter from the Deputy Assistant Secretary for Personnel, Department of State, dated March 6, 1981, indicates that there was a misunderstanding among Department officers about the time of the offer of the Warsaw position to Mr. Adler. He says that: "Not only was the Warsaw position intended by OES to be Mr. Adler's next assignment, but he was told about it by the OES Deputy Assistant Secretary on the day of his return to the Department, January 23, 1979. He was then placed in the first available Polish language class during the first week of February 1979." However, the record also contains another report which shows that at the time of Mr. Adler's reassignment to Washington, another candidate was under consideration for the Warsaw post. After the other candidate accepted another position in late January 1979, the position became available for Mr. Adler and as indicated, he was nominated on February 2, 1979. The delay in getting the necessary acceptance from our Embassy in Warsaw prevented formal action on his assignment until March 1979. This report was prepared in May 1979 during the period Mr. Adler was taking language training, and shortly after his arrival in Washington. Thus, it was based on facts available at that time.

The record also contains a statement from Mr. Adler which indicates that he was permanently assigned to Washington. He says that:

"Within two weeks after returning to the Department on January 23, I was enrolled in Polish language training for my next assignment in Warsaw this summer. Because this assignment was not available to me before I left Iran and was instead worked out after my return to Washington, I came back to 'DG/PER/OC.'"
(Emphasis supplied.)

Also, when Mr. Adler reported for duty in Washington, he claimed and collected temporary lodging allowance

(temporary quarters subsistence expense) payments, which are payable only at the employee's new permanent duty station incident to a transfer.

Mr. Adler also argues that his household effects were held by the State Department in Brussels pending his arrival in Warsaw, and that this indicates that his assignment to Washington was intended to be temporary. We do not agree that this fact alone supports his contention. Mr. Adler became available for the Warsaw assignment shortly after his arrival in Washington (February 2, 1979). Therefore, it was feasible for the State Department to hold his household effects in Brussels pending his assignment overseas after completion of his training.

Since the agency in exercising its discretion did not nominate Mr. Adler for the Warsaw position until February 2, 1979, nor take formal action to effectuate such a transfer until March 1979, the earlier transfer orders which had been fully carried out cannot be rescinded on the basis that it would have been to Mr. Adler's economic advantage to have done otherwise. Mr. Adler was not eligible for per diem in lieu of subsistence at Washington, D.C., during the period in question since it is payable only when the traveler is away from his post of duty on official business. Since Mr. Adler was not assigned anywhere else during the period in question, he could not be considered away from his post of duty while serving in Washington, D.C. Therefore, we are unable to conclude that the subject travel orders were issued without legal authority or under a mistake of fact or law. See Joseph S. Henderson, B-181891, July 16, 1975, reconsideration denied, July 21, 1976.

Accordingly, Mr. Adler's travel orders may not be retroactively amended, and his claim for per diem is denied.

Milton J. Azrolan
for
Comptroller General
of the United States