

**DECISION**

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

*Maguire*  
*2480T*

*24980*

**FILE:** B-210953

**DATE:** April 22, 1983

**MATTER OF:** Robert A. Motes - Miscellaneous  
Expense Allowance

**DIGEST:**

1. Because regulations and amended regulations both unambiguously define "effective date of transfer" as the date a transferring employee reports for duty at his new official station, employee who reported for duty prior to effective date of amended regulations may not be paid increased miscellaneous expense allowance, authorized by amended regulations. Effective date indicated on Form SF-50, "Notification of Personnel Action" is not determinative of effective date of transfer.
2. Although employee on temporary assignment may have acted in best interests of Government in not returning to permanent duty station pending reassignment, Federal Travel Regulations may not be waived to treat employee differently from others similarly situated. Federal administrators do not have discretion to waive regulations in certain individual cases and enforce them in others. Additionally, advance notice to affected employees is not a necessary prerequisite to amendment of Federal administrative regulations. Such advance notice is not required by previous Comptroller General decisions.

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This decision is in response to a request from Mr. Vaughn L. Roundy, Director, Division of Accounting, Fiscal, and Budget Services, Region VIII, Department of Health and Human Services (HHS) concerning the entitlement of Mr. Robert A. Motes, a recently transferred HHS employee, to the increased miscellaneous expense allowance authorized by a recent amendment to paragraph 2-3.3a of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR). We find that, because Mr. Motes' effective date of transfer, the date he reported to his new duty station, was prior to the effective date of the amendment of the regulations, he must be paid in accordance with the former regulations.

The facts of the case are as follows. Mr. Motes was temporarily assigned to the Social Security Administration Office in Minot, North Dakota. Near the end of that assignment, he applied for a position in Sioux Falls, South Dakota. A selection for the position in Sioux Falls was imminent when Mr. Motes' assignment in Minot expired. Rather than return to his permanent duty station, Grand Junction, Colorado, Mr. Motes requested and was granted annual leave until a selection was made for the position in Sioux Falls. Mr. Motes was eventually selected for the position in Sioux Falls. His selection is reflected in a Form SF-50, "Notification of Personnel Action" dated September 15, 1982, which lists October 3, 1982, as the "effective date." Mr. Motes reported for duty in Sioux Falls on September 22, 1982.

On October 8, 1982, the General Services Administration (GSA), published in the Federal Register amendments to the FTR including an amendment to paragraph 2-3.3a, which increased the maximum allowable miscellaneous expense allowance, without documentation, from \$200 to \$700 for an employee with immediate family. GSA Bulletin FPMR A-40, Supp. 4, 47 Fed. Reg. 44565, 44569, October 8, 1982. The amending notice provided, in part, "The revised provisions of chapter 2 [including the increased miscellaneous expense authorization] are effective for employees whose effective date of transfer (date the employee reports for duty at the new official station) is on or after October 1, 1982." Id. at 44565.

Mr. Motes claimed a miscellaneous expense allowance of \$700, the amount authorized by the amended regulations. All but \$200 of that claim was denied on the ground that Mr. Motes had reported for duty in Sioux Falls on

September 22, 1982, prior to October 1, 1982, the effective date of the amendment increasing the maximum allowable miscellaneous expense allowance to \$700. Mr. Motes requested that his claim be referred to our Office for a decision, contending: that the effective date of his appointment was October 3, 1982, the date on the SF-50; that the Government saved substantially from his decision not to return to Grand Junction; and that the "delayed publication" of the new regulations made it impossible for him to prudently plan his relocation.

All the parties in this case agree that Mr. Motes reported for duty in Sioux Falls on September 22, 1982. Mr. Motes, in his statement, says, "I was selected for the position in Sioux Falls and reported for duty on September 22, 1982, even though my appointment was effective October 3, 1982." In contrast, the GSA notice provides, without qualification, that the amendment to paragraph 2-3.3a was, "effective for employees whose effective date of transfer (date the employee reports for duty at the new official station) is on or after October 1, 1982." (Emphasis added.) Mr. Motes reported for duty in Sioux Falls prior to October 1, 1982--he is not, therefore, entitled to the increased allowance. We note, however, that Mr. Motes may claim in excess of the \$200 already allowed, if he can document all the miscellaneous expenses claimed.

Mr. Motes contends that October 3, 1982, the date indicated as the "effective date" on his SF-50, "Notification of Personnel Action," should be accepted as his "effective date of transfer" for purposes of his eligibility for the increased allowance under the amended regulation. However, that position is contrary to the plain meaning of the amending notice and the regulations. The GSA amending notice defines "effective date of transfer" as the "date the employee reports for duty at the new official station." Paragraph 2-1.4j of the FTR defines "effective date of transfer or appointment" as the "date on which an employee or new appointee reports for duty at his/her new or first official station." See Wanda A. Sherman, B-203371, February 9, 1982; Robert E. S. Clark, B-185726, August 12, 1976. In view of these unambiguous definitions of "effective date of transfer," the date indicated on Mr. Motes' "SF-50" is not determinative. This Office in prior cases has applied the definition in Paragraph 2-1.4j, despite indications in various administrative forms that an employee was transferred

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on a date other than the date on which the employee reported for duty at the new station. See Philip A. Jarmak, B-206258, June 16, 1982; James E. Wallace, B-205187, December 23, 1981.

Mr. Motes contends that his decision to take annual leave at the completion of his temporary assignment in Minot, rather than return to his permanent duty station in Colorado, resulted in substantial savings to the Government, and, therefore, equitable considerations should warrant waiver of his early reporting date in order that he may be paid the increased allowance. We agree that there is nothing in the record to indicate that Mr. Motes was acting other than in accord with the highest standards of Federal service. Nonetheless, it has been the consistent position of this Office that Federal administrators do not have discretion to waive regulations in certain individual cases and enforce them in others. We explained the rationale for this policy in a 1958 Comptroller General decision:

"\* \* \* It is well established in administrative law that valid statutory regulations have the force and effect of law, are general in their application, and may no more be waived than provisions of the statutes themselves. Regulations must contain a guide or standard alike to all individuals similarly situated, so that anyone interested may determine his own rights or exemptions thereunder. The administrative agency may not exercise discretion to enforce them against some and to refuse to enforce them against others. \* \* \*" 37 Comp. Gen. 820, 821 (1958). See also B-158880, October 27, 1966.

In this case, the relevant provisions of the Federal Travel Regulations may not be waived in order to allow Mr. Motes the increased miscellaneous expense allowance. Such a waiver would result in treatment of Mr. Motes that is inconsistent with treatment of others similarly situated, and, therefore, would be contrary to the longstanding position of this Office.

Finally, Mr. Motes contends that the "delayed publication" of the amended regulations made it impossible for him to prudently plan his relocation. Although the amendments

were effective on October 1, 1982, they were not published in the Federal Register until October 8, 1982. However, advance notice to affected employees is not a necessary prerequisite to the amendment of Federal administrative regulations. Bruce Adams, et al., 56 Comp. Gen. 425 (1977). Although we appreciate Mr. Motes' frustration at not being able to take advantage of the new, more generous regulations, we do not find that the lack of advance notice was improper here. Such advance notice is not required under our previous decisions, and, in addition, could create substantial administrative problems by generating either unwarranted delay or unwarranted haste by Federal employees, such as Mr. Motes, attempting to plan a pending transfer under the most advantageous terms.

*for* *Harry R. Dan Claus*  
Comptroller General  
of the United States