



Office of the General Counsel

B-238725.2

March 17, 1994

The Honorable Marilyn Davis
Assistant Secretary for Administration
Department of Housing
and Urban Development
Washington, D.C. 20410-3000

Dear Ms. Davis:

Ms. _____, a former employee of the Department of Housing and Urban Development (HUD's) San Francisco Regional Office, has asked us to review HUD's computation of a debt she owes for failing to fulfill her service agreement incident to training she received in a non-government facility. Because we do not have sufficient information to fully resolve the issues Ms. _____ raises, we ask that HUD, as the agency out of which the debt arose, review the computation.

The training at issue was part of HUD's Housing Technician Program to recruit individuals for entry-level technical professional positions in HUD's appraisal, mortgage credit, property disposition, and loan servicing disciplines. According to the course description, the training program consisted of about 6 months of full-time¹ non-government training (25 days of classroom instruction between October 15, 1987, and December 16, 1987, and 11 weeks of field training from January 4 to March 18, 1988)² followed by 6 months of on-the-job training, which ended in October 1989. Ms. _____ left the federal service in

¹"Full time training" means training that is the only assignment of an employee during one or more workdays or corresponding days of leave granted for purposes of training. Federal Personnel Manual, Chapter 410, para. 5-6(a), Oct. 22, 1981.

²During the field training period, Ms. _____ reported to her office for 4 hours each Friday to review her progress. Although it took place at her duty station, the agency states that this review was an integral part of the field training process, and not a return to work status.

March 1989, after completing about 5 months of service toward her service obligation.

In our decision, _____, B-238725, Aug. 14, 1990, we upheld the decision of your agency not to waive Ms. _____'s obligation to repay the government a proportional amount of the training expenses she incurred. However, because we concluded the service agreement was ambiguous, we held that her service obligation should be limited to the minimum time required by law (three times the period of training in non-government facilities) and referred her claim back to HUD for recomputation in accordance with 5 C.F.R. § 410.507 (1993). This regulation, promulgated by the Office of Personnel Management (OPM) pursuant to the Training Act, 5 U.S.C. §§ 4101-4119, provides in part:

(a) An employee assigned to full-time training by, in or through a non-Government facility is counted as being in training the same number of hours he is in a pay status during the training assignment, up to a maximum of 8 hours a day or 40 hours a week. If the employee is not in pay status during the training, he is counted as being in training the same number of hours as are in the period of any leave granted for the purpose of the training.

Ms. _____ alleges that the agency erroneously has included weekends, holidays, leave time and time in which she was in a work status in the agency's Sacramento field office. While we do not have enough information to audit her account, the following information is provided for your assistance in computing the number of days Ms. _____ was in training.

The term "pay status" is generally defined to include any status in which an employee may be paid, including holidays, annual leave and sick leave. See 5 C.F.R. § 551.401(b), OPM's regulation, issued pursuant to the Fair Labor Standards Act, defining hours of work. Thus, it appears that the agency may properly include paid holidays and paid leave occurring during the training when computing the number of days the employee was in training.

However, unpaid periods such as weekends and other periods in excess of 8 hours in a day or 40 hours in a week are not includable under section 410.507(a), supra. The information before us suggests the agency exceeded these limits in computing one 15-day period. See in this regard the agency's October 2, 1990 letter to Ms. _____ documenting her service obligation, where Ms. _____ is stated to have been in training for 15 days between October 15-30, 1987. The course syllabus supplied by Ms. _____ shows the time

scheduled for training to be 12 days. On its face, counting 15 consecutive days of training exceeds the 40-hour week maximum prescribed by the regulation. Therefore, we ask that the agency review this period, and the other periods included in the computation of Ms. service obligation, to exclude any periods exceeding these maximums.

As to the time Ms. alleges was improperly included because she was in a work status, not a training status, this involves the period between November 2 and 27, 1987, which the agency counted as part of Ms. training time. The course syllabus does not show training on those days, but the agency asserts that this period was used exclusively by appraiser trainees for self-study at the trainees' duty stations and that no other work was assigned to them. However, Ms. asserts she was in work status during that time performing review appraisals and inputting data into the computer for loan closings. We ask that the agency review this period to verify the accuracy of its position.

Personnel in OPM's Office of Training Policy, telephone (703) 235-1527, may be of assistance in answering specific questions concerning these computations, should further assistance be necessary.

Enclosed are copies of the documents Ms. sent us explaining her position and a copy of our decision B-238725, August 13, 1990, referred to above.

Upon completion of the review, please furnish the results directly to Ms. and advise the National Finance Center in New Orleans, which is processing the debt collection. Also, please provide us a copy of that response.

We are sending a copy of this letter to Ms. and to Congressman Robert T. Matsui, who inquired on her behalf.

Sincerely yours,

Robert P. Murphy

for
Robert P. Murphy
Acting General Counsel

Enclosures

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March 17, 1994

DIGEST

An employee asks whether an agency may include holidays, annual leave and sick leave in its computation of the employee's service obligation under 5 C.F.R. § 410.507 (1993), for agency paid training in a non-federal facility. For employees assigned to full-time training, any time spent in pay status may counted as time spent in training. "Pay status" is defined generally to include any time for which an employee may be paid, including the holidays, annual leave and sick leave. However, time spent in training may not exceed 8 hours in a day or 40 hours in a week; therefore, where an agency appears to have included more than 40 hours in a week in computing an employee's debt for not completing her obligated service, the matter is referred to the agency for review and recomputation.