Civilian Personnel Law Manual

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OFFICE OF GENERAL COUNSEL
U.S. GENERAL ACCOUNTING OFFICE

CIVILIAN PERSONNEL LAW MANUAL

SECOND EDITION * JUNE 1983/SUPPLEMENT 1986

UNITED STATES GENERAL ACCOUNTING OFFICE

OFFICE OF GENERAL COUNSEL

FOREWORD

In June 1983, the Second Edition of the Civilian Personnel Law Manual was issued. It reflects Comptroller General decisions of the General Accounting Office issued through September 30, 1982. In April 1984, we issued the 1984 Supplement to the Second Edition of the Civilian Personnel Law Manual, covering Comptroller General decisions from October 1, 1982, to December 31, 1983. In May 1985, we issued the 1985 Supplement to the Second Edition of the Civilian Personnel Law Manual, covering Comptroller General decisions from January 1, 1984, to December 31, 1984. We now issue the 1986 Supplement to the Second Edition of the Civilian Personnel Law Manual, covering Comptroller General decisions from January 1, 1985, to December 31, 1985.

The 1986 Supplement follows the same format as the Second Edition of the Civilian Personnel Law Manual and its 1984 and 1985 Supplements -- an Introduction and four titles: Title I - Compensation, Title II - Leave, Title III - Travel, and Title IV - Relocation. Each unit has been separately bound, but wrapped together for distribution purposes. Each unit of the 1986 Supplement can be filed with the corresponding units of the Second Edition of the Civilian Personnel Law Manual and its 1984 and 1985 Supplements. The information in the parentheses next to the headings in the text refers to the page numbers on which those headings can be found in the Second Edition of the Civilian Personnel Law Manual, unless otherwise indicated.

As always, we welcome any comments that you have regarding any aspect of the Second Edition of the Civilian Personnel Law Manual, its 1984 Supplement, its 1985 Supplement, or its 1986 Supplement. We hope that it will be a useful source of information concerning our personnel law decisions.

Harry R. Van Cleve

Harry R. Van Cleve, General Counsel
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

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INTRODUCTION

PART I

Statutory time limitations on claims (2)

A former employee claimed entitlement to overtime compensation for the period January 1, 1970, through December 31, 1974. The claim was received by GAO on August 9, 1977. Since 31 U.S.C. § 3702(b)(1) bars consideration of a claim presented to GAO more than 6 years after the date the claim accrued, that portion of the claim arising before August 9, 1971, was barred and could not be considered on its merits. Edward J. Reed, B-216359, March 5, 1985.

Administrative basis of claims adjudications

Dispute of fact (3)

See also Benjamin C. Hail, B-216573, February 11, 1985.

Requests for reconsideration as a right of appeal (3)

In order to obtain a reversal of a prior decision, a material mistake of law or fact must be proven. The claimant raised no new arguments in support of his claim for real estate expenses that were not considered in the prior decision. Mere disagreement with the previous decision is not a proper basis for reversal of a decision upon reconsideration. Phillip M. Napier, B-216938, November 12, 1985.

Procedures for decisions involving agencies and labor organizations (4)

See also National Federation of Federal Employees, Local 1437, B-220119, December 9, 1985; and Robert D. Healy, B-217172, June 12, 1985.

Jurisdictional limitations and policy considerations (5)

Constitutionality questions (New)

A Federal employee who was a member of the National Guard could not transfer 10 days of military leave from calendar year 1980 to fiscal year 1981 when legislation changed the method of granting military leave from a calendar year to a fiscal year basis. The employee suggested that the retroactivity of that legislation divested him of the 10 days' leave in contravention of his rights under the United States Constitution. It did not appear that the retroactivity of the statute divested the employee of any right, and in any event, it is the policy of the Comptroller General not to question the constitutionality of a statute enacted by the Congress. Laurie M. Brown, B-217565, June 27, 1985.

Statutory construction (New)

A provision of the U.S.C. authorizes military leave at the rate of 15 days per year for Federal employees who are members of Reserve components of the Armed Forces. On October 10, 1980, that provision was amended to change the method of granting annual military leave from a calendar year to a fiscal year basis. The amending legislation provided that it was to "take effect October 1, 1980," that is, on the first day of fiscal year 1981, or 10 days earlier than its date of enactment. The amendment must be given retroactive effect, since amending legislation may not be construed as being only prospective in its operation if it contains express language requiring retrospective application. Laurie M. Brown, B-217565, June 27, 1985.

Criminal conflict of interest statutes (New)

The Comptroller General has no authority to issue formal opinions concerning the application of criminal conflict of interest statutes. No proper basis exists, however, for generally excluding Federal retirees from obtaining Government contracts, and a dentist was not barred by conflict of interest considerations from providing services under contract to the Coast Guard simply because he was a retired officer of the Public Health Service. Dr. Edward Kugma, USPHS (Retired), B-215651, March 15, 1985.

Final decisions of the Merit Systems Protection Board (New)

A Navy employee who was terminated upon being advised that he was an alien was subsequently reinstated as a result of a final decision of the MSPB which ordered the cancellation of the employee's separation. The Navy asked whether its payment of backpay and continued salary to the employee incident to his reinstatement was proper. The payments were proper, since the MSPB is a "proper authority" to determine that an employee has been affected by an unjustified or unwarranted personnel action justifying backpay, and GAO does not review a final decision of the MSPB. Pepe Iata, B-216285, January 24, 1985.

Unfair labor practices (New)

An employee claimed that his agency's refusal to allow him to perform two TDY assignments constituted an unfair labor practice under 5 U.S.C. § 7116, and that he was entitled to the per diem, overtime compensation, and holiday premium pay he would have received had he performed the assignments. The GAO may not consider allegations concerning unfair labor practices, since the Federal Labor Relations Authority has exclusive jurisdiction to decide such complaints. Emery J. Sedlock, B-199104, February 6, 1985.

Matters pending before other forums (5)

See also Janet L. Apple, B-214659, February 12, 1985.

Agency grievance procedures (5)

See also Don Edgar Burris, B-217874, October 7, 1985.

Military Personnel and Civilian Employees Claims Act (6)

See also Michael J. Washenko, B-219094, December 5, 1985.

Civil service retirement annuity (New)

A retired civil service employee requested that the time of his voluntary retirement be backdated from January 8 to January 3, 1983, so that he would be allowed an annuity payment for the month of January 1983. The employee suggested that his selection of January 8th as the retirement date resulted from a mistake or ignorance of the law. The OPM is vested with exclusive authority to adjudicate civil service retirement annuity claims. Regarding the amount of pay already paid to the claimant, there is no basis to change the employee's status as an employee on duty and on leave based on the claimant's assertion that he was not aware of the requirements of existing law. Antoni Sniadach, B-214315, February 25, 1985, 64 Comp. Gen. 301.

Position classification issues (7)

See also William A. Lewis, B-216575, March 26, 1985.

Discrimination complaints (7)

See also Albert D. Parker, B-215672, March 18, 1985, 64 Comp. Gen. 349.

Other substantive jurisdictional issues

Erroneous advice and authorization (9)

See also Riva Fralick, et al., B-217519, April 18, 1985, 64 Comp. Gen. 472; and Herman Rosado and Sonia M. Terron, B-216343, March 4, 1985.

Estoppel against the Government (10)

See also Dorcas Terrien, B-218675, October 31, 1985.

INTRODUCTION

PART II

GAO RESEARCH MATERIALS AND FACILITIES

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Copies of the Second Edition of the Civilian Personnel Law Manual, its 1984 Supplement, its 1985 Supplement, or its 1986 Supplement, are available from:

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Civilian Personnel Law Manual

Second Edition • June 1983/Supplement 1986
Title I • Compensation

OFFICE OF GENERAL COUNSEL
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CHAPTER 1

CIVILIAN PAY SYSTEMS

F. OTHER SYSTEMS, SCHEDULES, AND AUTHORITIES

Panama Canal Commission Firefighters (New)

Firefighters employed by the Panama Canal Commission normally receive pay adjustments based on District of Columbia firefighters' pay, limited by the annual percentage adjustment in General Schedule pay rates. Where the General Schedule employees received a 3.5 percent pay increase which was later retroactively increased to 4 percent, these firefighters are entitled to the same retroactive increase since the employing agency adopted a mandatory policy of basing adjustments on the rates of pay for General Schedule employees. Panama Canal Commission Firefighters, B-216917, August 29, 1985, 64 Comp. Gen. 806.

CHAPTER 2

ENTITLEMENT TO COMPENSATION

F. DE FACTO EMPLOYMENT

De Facto pay

Reasonable value of services

Individual never appointed (2-10)--See Robert Lobato, B-216090, February 12, 1985, involving an individual who was offered a position as an expert to a presidential commission.

De Facto status

Service after expiration of term of office

Generally (2-11)

A university employee, who began a second Intergovernmental Personnel Act detail pursuant to an agreement which was never signed by the agency or the university, may be considered to have served as a de facto employee. Donald G. Stitts, B-216369, March 5, 1985.

Knowledge of appointment rule (2-11)

An individual who was offered a position as an expert to a presidential commission began working immediately pending completion of the hiring procedures. However, after he was advised by a personnel officer that he had not been appointed and should stop work, he is not entitled to compensation beyond the date of such notification. Robert Lobato, B-216090, February 12, 1985.

Contract for services (New)

Payment may be allowed to a retired Public Health Service officer for dental services furnished to the Coast Guard on the theory of quantum meruit where (1) the Government received a benefit, (2) the contractor acted in good faith, and (3) the amount claimed represents the reasonable value of the services rendered. Dr. Edward Kuzma, B-215651, March 15, 1985.

However, an active duty Public Health Service officer who performed consulting work for the Social Security Administration may not retain compensation received from such contracts under de facto or quantum meruit theories in the absence of clear and convincing evidence that he acted in good faith under the circumstances. Public Health Service Officer, B-214919, March 22, 1985, 64 Comp. Gen. 395.

G. WAIVER OF COMPENSATION (VOLUNTARY SERVICES) (2-16)

Reemployed annuitant (New)

An employee who retired offered to continue working until a replacement could be found. His claim for compensation is denied even though the retired employee asserts that his supervisor accepted his offer to continue working and would try to find a way to pay him. Under 31 U.S.C. § 1342, an officer or employee of the Government is prohibited from accepting the voluntary services of an individual. Nathaniel C. Elie, B-218705, October 21, 1985, 65 Comp. Gen. 21.

CHAPTER 3

BASIC COMPENSATION

SUBCHAPTER I -- COMPUTATION

A. HOURS OF WORK, DUTY (3-1)

Basic 40-hour week and work schedule

Generally

Employee's work schedule was changed from Monday through Friday schedule to a Sunday through Wednesday and Saturday with Thursday and Friday off. It is within the agency's discretion to change the administrative workweek, and the employee, upon conversion to the new schedule, is not entitled to two consecutive days off. William Kohler, B-216756, February 19, 1985.

Stay-in-School Program (New)

A student who participates in a Stay-in-School Program with part-time employment by an agency is entitled to compensation for hours worked outside the normal tour of duty which was approved in advance by the supervisor. In addition, a student who, under occasional special circumstances, is asked to work overtime may be compensated for such work even though it may exceed the 20-hour per week limitation for the Program. Thompson and Serna, B-215923, January 8, 1985.

B. BIWEEKLY PAY PERIODS AND HOURLY RATES (3-3)

Computation of pay -- statutory changes (3-1 Supp. 1984)

The authority to derive hourly rates of pay under 5 U.S.C. § 5504(b)(1) by dividing the annual rate of pay by 2087 expired effective September 30, 1985. However, the Congress permanently extended this authority in Public Law 99-272, April 7, 1986, effective the first pay period on or after March 1, 1986.

SUBCHAPTER II -- ESTABLISHMENT OF COMPENSATION INCIDENT TO CERTAIN PERSONNEL ACTIONS

A. NEW APPOINTMENTS

Superior qualifications appointment (3-7)

Failure to obtain OPM approval (3-1 Supp. 1985)

See also Rose Marie Bacon, B-219973, December 9, 1985.

Higher rates for supervisors of prevailing rate employees

Generally (3-7)

An employee is not entitled to a supervisory pay adjustment where he does not have regular responsibility for the supervision of the technical aspects of the work of the prevailing rate employees. John B. Tucker, B-215346, March 29, 1985.

B. POSITION OR APPOINTMENT CHANGES

Generally (3-10)

An employee whose temporary appointment was converted to a permanent appointment was delayed in his subsequent promotion to the grade GS-5 level due to time-in-grade restrictions. Where the conversion of the appointment was not erroneous, the agency may not retroactively change the action to allow the employee an earlier promotion to grade GS-5. Dewey R. Castelein, B-216970, April 1, 1985.

C. PROMOTIONS AND TRANSFERS (See also Chapter 7, Employee Make Whole Remedies.)

Effective date

Delay prior to approval (3-11)

Although the employee was selected for promotion from a register, was orally notified of her promotion, and reported to her new position, she is not entitled to a retroactive promotion where her promotion was delayed 1 month due to administrative delays in processing the necessary paperwork. The promotion may not be effective

earlier than the date of approval by the authorizing official, and the failure to promote the employee at an earlier date did not violate a nondiscretionary agency policy. Agnes Mansell, B-214203, September 12, 1985, 64 Comp. Gen. 844. See also Carol A. Barraza, B-219221, September 6, 1985.

Where an agency relied upon the employee's part-time status rather than the actual number of hours worked, her promotion after 1 year of experience was delayed. However, in the absence of a nondiscretionary agency policy, the promotion may not be made retroactively effective since the delay occurred before the appropriate official had approved the promotion. Rita H. Rains, B-217831, October 23, 1985.

Nondiscretionary agency policy (3-12)

An employee who was assigned the duties of a vacant, higher-graded position is entitled to a retroactive temporary promotion where the agency failed to carry out a nondiscretionary policy of granting temporary promotions to employees who assume the duties of a vacant position. Donna J. Safreed, B-216605, March 26, 1985.

SUBCHAPTER III--STEP INCREASES

A. PERIODIC STEP INCREASES

Creditable service

Time in nonpay status (3-35)

An FAA employee who was on leave without pay while performing active duty for training in the Army Reserve is entitled to creditable service for this period for the purposes of computing the waiting period for a step increase. Ronald E. Ferguson, B-215542, August 1, 1985.

B. QUALITY STEP INCREASE (3-38)

Although the employee was recommended for a QSI, the award was not approved since performance standards had not been approved for that office unit. The employee has no vested right to the award, even though recommended by his supervisor. Carl L. Haggins, B-216952, October 18, 1985.

CHAPTER 4

ADDITIONAL COMPENSATION FOR CLASSIFICATION ACT POSITIONS

SUBCHAPTER I -- PREMIUM PAY -- OVERTIME

B. OVERTIME UNDER 5 U.S.C. § 5542

What are compensable hours of work

Actual work requirement

Generally (4-4)

An employee claims entitlement to overtime and premium pay he would have received if the agency had allowed him to perform two temporary duty assignments. He is not entitled to the overtime and premium pay absent evidence that he performed compensable work. Emery J. Sedlock, B-199104, February 6, 1985.

Two-thirds rule (4-5)

As applied to Federal firefighters, see Frederick Evans, Jr., B-216640, March 13, 1985, sustained in B-216640, September 18, 1985.

While traveling

Arduous conditions

Generally (4-11)

Absent unusual conditions, travel by automobile over hard-surfaced roads does not constitute arduous conditions under the overtime statute. Dr. Saul Narotsky, B-217685, May 31, 1985. The same is true for long hours of travel on a commercial airliner. Thomas G. Hickey, B-207795, February 6, 1985.

Resulting from an event which could not be scheduled or controlled administratively

Schedulable or controllable

Generally (4-14)--Travel to relieve another employee for scheduled annual leave is within the agency's control. Dr. Saul Narotsky, B-217685, May 31, 1985.

Travel to meetings (4-14)--The scheduling of travel for an employee (to accommodate the Fly America Act) does not qualify as an event which could not be scheduled or controlled administratively. Thomas G. Hickey, B-207795, February 6, 1985.

Return travel (4-17)

Delays in concluding the field assignment or in obtaining return transportation does not authorize overtime compensation for return travel performed beyond normal duty hours. Don Edgar Burris, B-217874, October 7, 1985.

See, however, the 1984 amendment to 5 U.S.C. § 5542(b)(2) providing overtime for return travel if overtime was authorized for travel to the event. Public Law 98-473, October 12, 1984, 98 Stat. 1874.

Standby duty

At home (4-22)

VA nurses who are not required to remain at home while on call and whose residences have not been designated as their duty stations by the agency are not entitled to annual premium pay for standby duty. Rose J. Reiter and Rayford Guinn, B-215887 and B-215888, January 24, 1985.

Employees who are on call for emergency verification of stockpiles are not entitled to overtime compensation since they are not restricted to their living quarters but may carry a pager for the purpose of being contacted. Gary R. Clarke, B-217490, October 4, 1985,

FAA employees who use automated data processing equipment in their homes to adjust navigation instruments located elsewhere may be allowed overtime compensation provided the work is substantial in nature and the agency has procedures to verify the time and performance of the work. Work Performed At Home, B-217502, October 31, 1985, 65 Comp. Gen. 49.

Lunch periods (4-25)

An administrative law judge who complained he was permitted only 30 minutes for lunch while other employees were allowed 45 minutes is not entitled to overtime compensation for the 15-minute difference since there is no indication that he worked more than 8 hours a day. Don Edgar Burris, B-217874, October 7, 1985.

Officially ordered or approved

General rule (4-27)

An employee's claim for overtime compensation is denied where the overtime work was not ordered or approved by the branch chief, as required by a written agency policy. Carl. L. Haggins, B-216952, October 18, 1985.

Administrative workweek (4-30)

A Coast Guard employee whose tour of duty was changed from Monday through Friday tour to Sunday through Wednesday plus Saturday tour is not entitled to overtime compensation for the Sunday he worked at the time of the change of tours. Since the Coast Guard administrative workweek runs from 0000 hours Sunday to 2400 Saturday, the employee did not work more than 5 days or 40 hours in any one workweek. William Kohler, B-216756, February 19, 1985.

"Call-Back" overtime (4-31)

The minimum 2-hour credit for unscheduled overtime work is not available where the employees are called upon to perform unscheduled work at their homes adjusting navigation equipment by remote control. The purpose of

the "call-back" statute is to compensate employees for the particular inconvenience in preparing for work and traveling back to their work stations. Work Performed At Home, B-217502, October 31, 1985, 65 Comp. Gen. 49.

C. OVERTIME UNDER FLSA

Paid absences

Generally (4-39)

See Frederick Evans, Jr., B-216640, March 13, 1985, sustained in B-216640, September 18, 1985.

Standby duty at home (New)

An employee who must live in government-owned housing at a dam reservation and respond to telephone calls after hours is not entitled to overtime compensation under the FLSA since the record does not indicate his off-duty hours were so severely restricted so as to entitle him to overtime compensation. Curtis N. Anderson, B-218519, October 15, 1985.

SUBCHAPTER II--OTHER PREMIUM PAY

B. HOLIDAY PAY

See also LEAVE, Chapter 5, Holidays, concerning excused absence for holidays.

In lieu of days

Inauguration Day (4-54)

Employees stationed in Fairfax City, Virginia, who worked on Inauguration Day, Monday, January 21, 1985, are entitled to holiday premium pay. Although Fairfax City is not mentioned in section 6103 of title 5, United States Code, the legislative history indicates the statute was intended to authorize the inaugural holiday for employees working in the geographic locale of Fairfax City. Defense Investigative Service, B-217779, July 16, 1985, 64 Comp. Gen. 679.

F. HAZARDOUS DUTY DIFFERENTIAL

Administrative approval--GAO review (4-70)

See also William A. Lewis, B-216575, March 26, 1985, and Robert F. Birks, B-217860, August 14, 1985.

G. OVERTIME COMPENSATION FOR SPECIFICALLY NAMED GROUPS OF EMPLOYEES

Customs Service

Investigative duties (4-74)

Customs Service employees are entitled to overtime compensation under 19 U.S.C. §§ 267 and 1451 rather than the rate paid under the Federal Employees Pay Act of 1945 if they actually performed "inspectional services" as specified in the customs statute. The employees' job descriptions need not call for the performance of such inspectional services, nor must the employees work in the primary search area. Kenneth J. Corpman, B-214845, April 12, 1985, clarifying Murphy and Doud, B-194568, February 15, 1980.

SUBCHAPTER III--SEVERANCE PAY AND ALLOWANCES

A. SEVERANCE PAY

Reason for separation

Resignation prior to separation (4-81)

Where the agency announced a transfer of function, the employee was advised if he declined to move he could resign and receive severance pay. After the employee submitted his resignation but before its effective date, the agency cancelled the transfer of function and advised the employee he could withdraw his resignation. The employee is not entitled to severance pay since his resignation was voluntary. Thomas L. Wickstrom, B-219273, December 26, 1985.

CHAPTER 5

PAYROLL DEDUCTIONS, DEBT LIQUIDATION, WAIVER OF ERRONEOUS PAYMENTS OF COMPENSATION

SUBCHAPTER II--DEBT LIQUIDATION

B. DEBT COLLECTION ACT OF 1982

Salary offset (5-21)

The debt of a Public Health Service officer for erroneous pay from the Social Security Administration may be collected by administrative offset against his current pay or, upon retirement, against any final pay, lump-sum leave payment, and retired pay. The 10-year limitation on collection by setoff does not apply in this case where facts material to the Government's right to collect were not known by Government officials until 13 years after the erroneous payments began. Public Health Service Officer, B-214919, March 22, 1985, 64 Comp. Gen. 395 (1985).

Administrative offset (5-23)

Section 10 (administrative offset) of the Debt Collection Act of 1982, rather than section 5 (salary offset) is applicable to offsets against payments from the Civil Service Retirement and Disability Fund. Section 10 is also applicable to offsets against a former employee's final salary check and lump-sum leave payment, unless these payments represent the continuation of an offset against current salary initiated under section 5. Veterans Administration, B-217274, September 30, 1985, 64 Comp. Gen. 907.

SUBCHAPTER III--WAIVER OF ERRONEOUS PAYMENTS OF COMPENSATION

A. STATUTORY AUTHORITY (5-29)

With the enactment of Public Law 99-224, December 28, 1985, the waiver authority in 5 U.S.C. § 5584 has been expanded to include erroneous payments of travel, transportation and relocation expenses and allowances. This amendment is not retroactive, so the expanded waiver authority applies only to overpayments made on or after December 28, 1985.

The Comptroller General advised heads of executive agencies and other interested parties by letter B-197290, February 24, 1986, that the expanded authority is now available and that the procedures and standards contained in 4 C.F.R. Parts 91 through 93 should be applied.

C. WHAT CONSTITUTES COMPENSATION

Leave

Positive leave balance (5-32)

See Carl. H. L. Barksdale, B-219505, November 29, 1985.

Negative leave balance (5-32)

Where the agency's error in computing an employee's service computation date caused him to be incorrectly credited with additional annual leave, his leave balance should be reconstructed for each separate year to arrive at a proper balance. If, after adjustment each year, there is a positive leave balance, there is no overpayment to be waived. However, if the reconstruction of the employee's leave balance each year shows he used leave in excess of that to which he was entitled, the waiver authority may be exercised. Lester L. Jefferson, B-219000, October 9, 1985.

Travel, transportation and relocation expenses (5-33)

See also Henriette D. Avram, B-216822, March 18, 1985, involving the personal use of airline bonus credits creating an indebtedness which may not be waived since it arose prior to December 28, 1985.

See, however, the amendments to the waiver statute contained in Public Law 99-224, December 28, 1985, extending the waiver authority to overpayments of travel, transportation and relocation expenses and allowances. B-197290, February 24, 1986.

D. EFFECT OF EMPLOYEE'S FAULT

Generally (5-35)

A Public Health Service officer who failed to seek approval for outside employment and who apparently took steps to conceal his employment will not receive waiver of the erroneous payments from his outside employment since he was not without fault and did not act in good faith in the matter. Public Health Service Officer, B-214919, March 22, 1985, 64 Comp. Gen. 395.

Imputed knowledge--employment history

Position (5-37)

Waiver of overpayments is denied for an employee who, after promotion to grade GS-6, was then promoted to grade GS-7 only 3 months later. The employee was a former payroll clerk, a position which required knowledge of various pay entitlement laws and regulations, and she should have known she was not entitled to a second promotion after 3 months. Carolyne Wertz, B-217816, August 23, 1985.

Lengthy Experience (5-37)

See Carolyne Wertz, B-217816, August 23, 1985, in which we denied waiver to an employee with over 9 years of Federal service who received two promotions within a period of 3 months.

Reasonable and prudent person standard (5-38)

Waiver is denied to a retired Coast Guard officer who received full civilian and retired military pay in violation of the dual compensation prohibitions. Although he advised the agency and the military of his status, he knew of the dual compensation restrictions and when he received $900 per month in excess of his entitlement, he should have known he was being overpaid. Commander George W. Conrad, B-217241, April 9, 1985.

Constructive notice--receipt of documents

Failure to reduce post differential (5-41)

An Air Force employee continued to receive post allowance and living quarters allowance after his transfer from England to West Germany even though a post allowance is not payable in Weisbaden and he moved into Government quarters, which would terminate his living quarters allowance. Waiver is denied since he should have expected a decrease in his pay and he failed to examine his record of bank deposits. Frank A. Ryan, B-218722, December 17, 1985.

CHAPTER 6

RESTRICTIONS ON PAYMENT OF COMPENSATION BY THE UNITED STATES AND ON ACCEPTANCE OF COMPENSATION FROM SOURCES OTHER THAN FEDERAL FUNDS

SUBCHAPTER I--RESTRICTIONS ON PAYMENT OF COMPENSATION BY THE UNITED STATES

A. MISCELLANEOUS STATUTORY PROVISIONS

Extra Compensation

Prohibition (6-2)

An active duty Public Health Service commissioned officer who provided medical consulting services to the Social Security Administration on an hourly basis under personal services contracts may not retain such compensation for services since it was incompatible with his status as a commissioned officer and a violation of the statutory prohibition. Public Health Service Officer, B-214919, March 22, 1985, 64 Comp. Gen. 395.

Concurrent military and civilian service

Members of Reserves and National Guard (6-3)

See the statutory provision limiting the combined military and civilian compensation in 1981 and 1982 to the rate payable for Level V of the Executive Schedule. The limitation must be applied on a biweekly pay period basis. Military Reserve Technicians' Pay, B-206699, November 25, 1985, 65 Comp. Gen. 78.

Employment of aliens - Appropriation act restrictions

Exclusion for DOD personnel (6-5)

See Pepe Iata, B-216285, January 24, 1985, where the Merit Systems Protection Board held the appointment of an alien by the Navy was not in violation of the absolute statutory prohibition on employing aliens in view of the appropriation act exclusions from this rule for DOD personnel as well as the statutory authority of the Secretary of the Navy to employ non-citizens contained in 10 U.S.C. § 7473 (1982).

Overseas teachers (New)

A full-time teacher in the DOD Overseas Dependents' Schools may receive compensation for attending a meeting of the Advisory Council on Dependents' Education under the Department of Education. Members of the Advisory Council "who are not in the regular full-time employ of the United States" may receive compensation for attending Council meetings. See 20 U.S.C. § 929(d). Full-time overseas teachers are not "full-time employees" for the purposes of this Advisory Council statute. H. S. Shutleff, B-215834, January 28, 1985.

D. REEMPLOYMENT OF ANNUITANTS

Generally (6-10)

A Civil Service annuitant who claims entitlement to full compensation, in addition to his annuity, for temporary full-time duties allegedly performed after his retirement, may not be paid since he was not appointed to a position following retirement. Nathaniel C. Elie, B-218705, October 21, 1985, 65 Comp. Gen. 21.

E. STATUTORY CEILINGS OF COMPENSATION (6-14)

Limitation on military retired pay

Dual Compensation restrictions under 5 U.S.C. § 5532 (6-3 Supp. 1984)

A retired Coast Guard officer who was employed by the National Transportation Safety Board may not receive both his full civilian pay as well as his full retired pay in view of the dual compensation prohibitions in 5 U.S.C. § 5532. Commander George W. Conrad, B-217241, April 9, 1985.

A temporary officer who became entitled to retired pay after 1948 is not entitled to the exemption from the dual compensation provisions for Reserve officers in effect at the time of his retirement. Major John E. Doyle, B-136167, June 25, 1985.

Limitation on prevailing rate employees (6-1 Supp. 1985)

The pay caps on wage increases for prevailing rate employees during fiscal years 1982, 1983, and 1984 are applicable to such employees in a wage area where the pay increases are based on wage rates from another area under the Monroney Amendment. Barksdale A.F.B., B-216112, January 29, 1985, 64 Comp. Gen. 227.

Limitation on combined military and civilian compensation (New)

During fiscal year 1982 and part of fiscal year 1983 there was a statutory limitation on combined military and civilian compensation for military reserve technicians, not to exceed Level V of the Executive Schedule. The limitation must be applied on a biweekly pay period basis instead of an annual basis in view of the statutory language and the legislative history. Military Reserve Technicians' Pay, B-206699, November 25, 1985, 65 Comp. Gen. 78.

SUBCHAPTER II--RESTRICTIONS ON ACCEPTANCE OF COMPENSATION FROM SOURCES OTHER THAN FEDERAL FUNDS

A. PROHIBITION AGAINST ACCEPTANCE

Contributions from private sources

Acceptance of travel expenses (6-17)

An employee of the Bonneville Power Administration attended a meeting sponsored by a non-profit electric utility corporation and was provided lunch and dinner without cost to the Government. Since the corporation is tax-exempt under 26 U.S.C. § 501(c)(3), the employee may accept the meals, as permitted under 5 U.S.C. § 4111(a). Walter E. Myers, B-216170, January 8, 1985, 64 Comp. Gen. 185.

B. EMOLUMENTS FROM FOREIGN GOVERNMENTS (6-17)

Corporations (6-4 Supp. 1984)

Two retired Marine Corps officers who are employed by or are "of counsel" to a law firm incorporated as a professional corporation may not serve as legal counsel for an

instrumentality of a foreign government without obtaining the consent of Congress as provided by Article I, section 9, clause 8 of the U. S. Constitution and 37 U.S.C. § 908. The existence of the professional corporation does not affect the application of the constitutional prohibition. Retired Marine Corps Officers, B-217096, March 11, 1985.

CHAPTER 7

EMPLOYEE MAKE-WHOLE REMEDIES

B. BACK PAY ACT

Effect of MSPB decision (7-3)

The Merit Systems Protection Board (MSPB) is an "appropriate authority" under the Back Pay Act, and GAO has no authority to review decisions and orders of the Board. Therefore, the Navy must reinstate and pay backpay to an individual whom the Navy removed from employment upon learning that the individual was an alien and not a citizen of the United States. Pepe Iata, B-216285, January 24, 1985.

Determination regarding unjustified or unwarranted personnel actions

Retirement under misimpression as to annuity (7-7)

A civilian employee who requested voluntary retirement was later reinstated after he refused to waive retired military pay in order to qualify for a civil service annuity. The employee is not entitled to backpay for the period he was separated since he was counseled prior to separation regarding the waiver of retired military pay. Benjamin C. Hail, B-216573, February 11, 1985.

Retroactive retirements (7-7)

An employee who chose to voluntarily retire on January 8 seeks to backdate his retirement to January 3 in order to receive an annuity payment for the month of January. The payment of annuities is within the jurisdiction of the Office of Personnel Management. As to his duty status, there is no basis to change his duty and leave status based on his assertions that he was unaware of the requirements of existing law. Antoni Sniadach, B-214315, February 25, 1985, 64 Comp. Gen. 301.

Suspension (7-9)

An employee was placed on involuntary leave on the basis of medical evidence provided by his own physician and the results of a fitness-for-duty examination. The request for disability retirement was denied by OPM, but the agency failed to return the employee to duty for 4 months. The employee's claim for backpay prior to the OPM determination is denied where the agency reasonably interpreted the medical evidence as indicating the employee's incapacity to perform his duties, and OPM did not overturn the evidence. However, the employee is entitled to backpay and restoration of leave for the 4-month period following OPM's determination. Albert R. Brister, B-217171, May 28, 1985.

Reduction in grade (7-10)

Voluntary action by employee (New)

An employee who initiates a voluntary transfer with a demotion claims entitlement to relocation expenses and backpay when his new position is abolished and he is placed in another position at the same grade. There is no basis to pay backpay since the employee has not been affected by an unjustified or unwarranted personnel action. Stephen M. Weaver, B-218966, October 3, 1985.

Retroactive promotions

Personnel action not effected as intended

Lost or misplaced promotion documents (7-12)--See also Carol A. Barraza, B-219221, September 6, 1985.

Delayed or improperly initiated promotion request (7-13)--An employee who was selected from a selection register for promotion and was told of her promotion was not actually promoted until 1 month later due to administrative delays in processing the necessary paperwork. Her claim for a retroactive promotion is denied since the delays occurred before the authorized official approved her promotion and since there was no violation of a nondiscretionary agency regulation or policy. Agnes Mansell, B-214203, September 12, 1985, 64 Comp. Gen. 844.

Time-in-grade incorrectly computed (New)

Where the regional personnel office looked at an employee's part-time status instead of the actual number of hours worked (essentially full-time), the employee's promotion was delayed 4 weeks until the error could be corrected. However, absent a nondiscretionary agency policy, the promotion may not be made retroactively effective since the delay occurred before the appropriate official could approve the promotion. Rita H. Rains, B-217831, October 23, 1985.

Nondiscretionary agency policy

Stated agency policy (7-14)--An employee who was assigned the duties of a vacant and higher-graded position is entitled to a retroactive temporary promotion in view of a nondiscretionary agency policy to temporarily promote each employee who assumes the duties of the vacant position. Donna J. Safreed, B-216605, March 26, 1985.

Training (New)

An employee, after separation from his position, continued with training which had been approved and paid for by his agency prior to separation. Since the terms "pay, allowances, or differentials" may be applied broadly to cover all monetary benefits an individual would have received, he may be reimbursed for training for which the agency would have paid but for the unjustified removal. James B. Ruch, B-215626, January 7, 1985.

C. REMEDIES NOT ALLOWED UNDER THE BACK PAY ACT

Interest on backpay (7-23)

See Albert R. Brister, B-217171, May 28, 1985, and James B. Ruch, B-215626, January 7, 1985.

Attorney fees and other litigation expenses (7-23)

Named as alleged discriminating official (New)

There is no legal authority to reimburse an Agriculture employee for legal fees incurred in connection with a discrimination complaint in which he was named as an alleged discriminating official. John E. Schrote, B-201183, February 1, 1985.

Health insurance (New)

Employees who are reinstated under the Back Pay Act may enroll as a new employee in a health benefit plan or have their old coverage reinstated retroactively in which case they must pay the premiums. See 5 U.S.C. § 8908 (1982). However, the Government will not reimburse employees for the cost of private health insurance which may have been obtained during the period of removal. James B. Ruch, B-215626, January 7, 1985.

D. COMPUTATION OF BACKPAY UNDER 5 U.S.C. § 5596

Generally (7-26)

An employee who was absent-without-leave (AWOL) for a period prior to her removal is not entitled to backpay for the period of AWOL after reinstatement by the MSPB absent evidence that she was ready, willing and able to work during that period. Colegera L. Mariscalo, B-214873, June 25, 1985, 64 Comp. Gen. 631.

An employee of the U.S. Navy in the Philippines held a position available only to Philippine nationals. When he acquired U.S. citizenship, he was separated from his position. The MSPB held that he should have been given 60-day notice prior to separation under RIF procedures. He is not entitled to backpay beyond the 60-day period since there were no other positions available to him and since he emigrated to the United States shortly after he was removed from his position. Joseph B. Riego, Sr., B-217044, December 11, 1985.

Premium pay (7-26)

A restored air traffic controller claims entitlement to premium pay for on-the-job training supervision, but her claim is denied since she was not qualified as a journeyman controller and since selection for training is not a right nor is it guaranteed. Janet L. Apple, B-214659, February 12, 1985.

Setoff of outside earnings from backpay

Lump-sum leave payment (7-27)

See also Janet L. Apple, B-214659, February 12, 1985.

E. OTHER MAKE WHOLE REMEDIES

Health insurance for restored employees (7-29)

See James B. Ruch, B-215626, January 7, 1985.

Government life insurance for restored employees (7-30)

Two Forest Service employees elected to retire when they were removed for failing to accept reassignments outside of their commuting areas. Both appealed their removals, and the MSPB ordered their reinstatements. They are entitled to reimbursement for life insurance premiums deducted from their annuities during the period of erroneous retirement. However, premiums for insurance coverage will be deducted from their backpay awards based on the coverage previously selected by the employees. Neal and Roy, B-215998, April 1, 1985, 64 Comp. Gen. 435.

Employment discrimination (7-30)

An agency may informally settle an age discrimination complaint with a lump-sum compromise settlement to the extent that the settlement does not exceed the amount of backpay which could be recovered under a finding of discrimination. Albert D. Parker, B-215672, March 18, 1985, 64 Comp. Gen. 349.

Attorney fees (7-31)

An employee claims attorney fees in connection with administrative settlement of his age discrimination complaint. Although we previously stated in 59 Comp. Gen. 728 (1980) that we would not object to regulations authorizing agencies to pay fees, we now hold that such fees may not be paid at the administrative level in view of the lack of specific statutory authority and subsequent court decisions. Albert D. Parker, B-215672, March 18, 1985, 64 Comp. Gen. 349 (1985), overruling in part 59 Comp. Gen. 728 (1980).

CHAPTER 8

OTHER PROVISIONS PERTAINING TO EMPLOYEES

B. DETAILS OF GOVERNMENT EMPLOYEES

Details to higher-graded positions for more than 120 days

Cases decided after May 25, 1982 (8-9)

See also Evelyn O. Cheeseboro, B-217830, August 29, 1985, and Edward R. Smith, B-219470, November 8, 1985.

G. CONFLICT OF INTEREST STATUTES

Generally (8-28)

A retired Public Health Service dentist provided dental services under contract to the Coast Guard. Our Office has no authority to issue formal opinions concerning the application of conflict of interest statutes to the arrangement, but we are aware of no basis to generally exclude Federal retirees from obtaining Government contracts. Dr. Edward Kuzma, B-215651, March 15, 1985.

H. LABOR RELATIONS MATTERS

GAO jurisdiction pursuant to 4 C.F.R. Part 22

Arbitration award (8-29)

Although the agency requests a decision concerning computation of overtime backpay awarded by a arbitrator pursuant to a collective bargaining agreement, we decline jurisdiction in the absence of a request from an arbitrator or other neutral party or a joint request from the parties. If the parties cannot reach an agreement, the matter is more appropriately resolved under the procedures set forth in 5 U.S.C. Chapter 71. Robert D. Healy, B-217172, June 12, 1985.

CHAPTER 10

SERVICES OBTAINED THROUGH OTHER THAN REGULAR EMPLOYMENT

SUBCHAPTER II--CONTRACT SUPPORT AND TECHNICAL SERVICES

B. PROPER CONTRACTING (10-16)

Oral agreement (New)

Coast Guard medical staff members who entered into an oral agreement with a retired Public Health Service officer for dental services lacked authority to enter into or administer Government contracts. However, payment may be allowed for the reasonable value of the services since the arrangement would have been a permissible procurement action if the formal procedures had been followed. Payment is appropriate where (1) the Government received a benefit, (2) the contractor acted in good faith, and (3) the amount claimed represents the reasonable value of the benefit received. Dr. Edward Kuzma, B-215651, March 15, 1985.

CHAPTER 11

PREVAILING RATE SYSTEMS

SUBCHAPTER II--BASIC COMPENSATION

A. BASIC DETERMINATIONS (11-3)

Application of pay cap to wages adjusted under the Monroney Amendment (New)

Prevailing rate employees at Barksdale A.F.B., Louisiana, were entitled to wage adjustments from another area based on the Monroney Amendment. These wage increases may not exceed the statutory pay increase caps for fiscal years 1982, 1983, and 1984 since there is no indication that the pay caps are not applicable to wages initially established under the Monroney Amendment. Barksdale A.F.B., B-216112, January 29, 1985, 64 Comp. Gen. 227 (1985).

Application of pay cap to pay changes due to reassignment between wage areas (New)

Prevailing rate employees were "transferred in place" due to a realignment of district boundaries, and this resulted in a pay increase in excess of the pay cap. These adjustments did not result from a wage survey, and thus they are outside of the scope of the pay cap legislation. Corps of Engineers, B-217403, September 30, 1985, 64 Comp. Gen. 912.

F. CONVERSION AND TRANSFER BETWEEN PAY SYSTEMS AND GRADE AND PAY RETENTION (11-8)

A printing and lithographic employee, whose position was converted in December 1980 from an agency-established special printing wage schedule to the Federal Wage System (FWS), received grade retention for 2 years and indefinite pay retention. In 1982, his former position was abolished before the 1982 comparability adjustment became due. He is entitled to the full comparability adjustment payable in 1982 based on the rate of basic pay for his new FWS position. M. H. Todd, B-217104, September 30, 1985.

SUBCHAPTER IV--SIMILAR SYSTEMS

A. VESSEL CREWS

Additional compensation (11-26)

Pay cap on premium pay (New)

Civilian marine employees whose pay is set administratively under 5 U.S.C. § 5348(a) are not subject to pay caps on their premium pay increases. The pay cap language for fiscal years 1981 through 1983 do not apply to premium pay. In addition, the Court of Claims in National Maritime Union v. United States, 682 F.2d 944 (Ct. Cl. 1982), overturned one agency's attempt to limit such increases in prior fiscal years, and there is no evidence of subsequent legislative intent to overrule that decision. Crews of Vessels, B-214765, March 25, 1985, 64 Comp. Gen. 419.

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OFFICE OF GENERAL COUNSEL
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CHAPTER 1

GENERAL PROVISIONS

C. EMPLOYEES EXCLUDED

Specific categories of employees (1-6)

Executive Officer of the D.C. Courts (New)

The Executive Officer of the District of Columbia (D.C.) Courts is entitled to the leave benefits of the D.C. judges as well as the compensation and retirement benefits which are specifically provided by statute. Since the Executive Officer of the D.C. Courts is no longer subject to the Annual and Sick Leave Act, 5 U.S.C §§ 6301-6312, the leave entitlement of the Executive Officer is subject to administrative determination by the District of Columbia Courts. Due to legislative changes, 52 Comp. Gen. 111 (1972) will no longer be followed. Larry P. Polansky, B-217270, October 28, 1985.

CHAPTER 2

ANNUAL LEAVE

B. ACCRUAL

During suspension or separation (2-4)

Forfeiture of leave (New)

Federal employees are generally eligible to carry over no more than 240 hours of unused annual leave from one year to the next. An employee who has been suspended from duty without pay, and who cannot use annual leave, is subject to this maxumum leave carryover limitation. Thus, an employee who was suspended and was not restored to duty until the next succeeding year forfeited the number of hours of annual leave in excess of 240 hours which were credited to his leave account at the time the suspension began. B-219974, October 21, 1985.

C. CREDITABLE SERVICE

Noncreditable service (2-8)

An employee in leave-without-pay status, performing active duty for training, may not be credited with annual leave that would have accrued for that period of military duty. However, that period of time should be counted as creditable service in determining whether an employee may receive a periodic step increase. Ronald E. Ferguson, B-215542, August 1, 1985.

E. ADMINISTRATION OF ANNUAL LEAVE

Generally (2-11)

Flexible work schedule (New)

An employee working a flexible schedule in accordance with 5 U.S.C. § 6122(a) elected the first day of the pay period as a "flex day." When the agency was closed for that entire day because of weather conditions, she claimed entitlement to an additional day off in lieu of that day. Employees taking a day off or a "flex day" under a flexible schedule

are in a nonpay status on those days, in contrast to employees on approved leave. Since the employee was not in a pay status on the day the agency closed because of weather conditions, she has no entitlement to an additional day off. The situation is not analogous to a holiday where employees are in a pay status. Ann Knodle, B-217080, June 3, 1985.

Repayment of excess leave (2-22)

When an employee has leave erroneously credited, the leave account should be reconstructed for each separate year involved to arrive at a proper current leave balance, and to determine whether an erroneous payment of pay has resulted. If the reconstruction of the employee's leave record for a year shows that he used leave in excess of that to which he was entitled, there has been an overpayment on the days he used the excess leave. The salary paid to him for those days becomes a debt to the Government which is subject to waiver in an appropriate case. Alternatively, if the employee has sufficient leave to cover leave taken even after the adjustment, and the reconstructed account results in a positive balance at the end of the year, the error is corrected by the reduction of the employee's positive leave balance. Where an employee is granted a waiver for all years in which an overpayment occurred, that waiver, combined with the appropriate downward adjustment of his leave account, fully extinguishes the employee's indebtedness arising out of the improper crediting of his leave account. Lester L. Jefferson, B-219000, October 9, 1985.

Where an employee's annual leave account was overcredited, the employee may be granted waiver only to the extent reconstruction of his leave account results in a negative leave balance. The hours deducted in reconstructing his annual leave account may not be waived or otherwise recredited. When an employee has sufficient leave to his credit to cover the adjustment there is no overpayment of pay which may be considered for waiver. Carl H. L. Barksdale, B-219505, November 29, 1985.

F. RESTORATION OF LEAVE

Under Public Law 93-181

Sickness

Employee on extended illness (2-33) -- An employee sustained a compensable on-the-job injury resulting in a prolonged recuperation period which extended beyond the end of the

leave year. The fact that he scheduled annual leave after the injury, with the knowledge that he probably would be unable to use it, does not preclude restoration of the leave. The employee, who was covered by workers' compensation during the period, was not obligated to use the scheduled annual leave to avoid forfeiture. Bruce F. Scott, B-218728, December 10, 1981.

Under Back Pay Act of 1966

Involuntary leave

Disability retirement (2-36) -- The Office of Personnel Management (OPM) determined that an employee, placed on involuntary leave on the basis of medical evidence provided by his own physician and the results of a fitness-for-duty examination, was not eligible for disability retirement. The agency failed to return the employee to duty until four months later. The employee is entitled to backpay and restoration of leave for the period of involuntary leave subsequent to OPM's determination since the agency was required at that point to either return the employee to duty or initiate his separation on the grounds of disability. The employee's claim for the period prior to OPM's determination may not be allowed since the agency reasonably interpreted the medical evidence presented as indicating the employee's incapacity to perform his duties and OPM did not overturn that evidence. Albert R. Brister, B-217171, May 28, 1985.

CHAPTER 3

LUMP-SUM LEAVE PAYMENTS

D. REEMPLOYMENT AND RECREDIT

Refund

Refund required

After erroneous separation (3-12) -- A terminated employee is entitled to a lump-sum payment for unused annual leave upon separation from service, but must refund the full amount if the separation is subsequently set aside, because there no longer exists any proper basis for the payment. Therefore, recoupment of a lump-sum leave payment is required in the case of an employee who was terminated, but whose termination was subsequently changed to a suspension in arbitration proceedings, since the employee would not have received a lump-sum payment for unused leave if suspension rather than termination had been the original disciplinary action. B-219974, October 21, 1985.

CHAPTER 5

OTHER LEAVE PROVISIONS

A. ADMINISTRATIVE LEAVE

Administrative discretion (5-1)

Fulfillment of position requirements (New)

When Federal employees request administrative leave for a brief, determinate period of time to fulfill requirements of their position, the employing agency normally has discretion to grant the request. Thus, attorneys who are required to become members of a bar to maintain their employment may generally be granted administrative leave for the time required to attend a necessary state bar admission ceremony. But when a state provides for an attorney who is a Federal employee to be sworn in to its bar in the vicinity of the attorney's permanent duty station and place of residence, the employing agency may grant administrative leave only if the attorney chooses the option of being sworn in locally. Andrew Maikovich, B-219112, August 14, 1985.

Other specific situations (5-5)

Furloughs (New)

Incident to a forced agency furlough plan, an employee took 3 furlough days off without pay during a scheduled furlough period. The furlough plan was later canceled and the employee was allowed to substitute annual leave for the 3 days. The agency's denial of the employee's request for restoration of annual leave was an appropriate exercise of its descretion, in the absence of a showing that others similarly situated were granted an excused absence with pay. Steven M. Rudolph, B-219211, December 9, 1985. Compare Merit Systems Protection Board, B-208406, October 6, 1982 (62 Comp. Gen. 1). See 5-1 of 1984 Supplement.

Bad weather (5-7)

Handicapped employee (New) -- Where a handicapped employee arrived early at his temporary duty site in order to avoid driving in inclement weather it would be an appropriate exercise of administrative discretion for the agency to excuse the employee for the time in question, without a charge to his annual leave account. Steve Stone, B-216119, February 26, 1985 (64 Comp. Gen. 310).

LEAVE, Supp. 1986

C. COURT LEAVE

Service as a juror

Administration (5-14)

Employee eligible for excusal (New) -- An employee who commuted to his permanent duty station in Washington, D.C., from a residence in Virginia, and who also maintained a residence in New Jersey, was called to serve as a juror in New Jersey. The employee's agency denied court leave after determining that he might have been excused from jury duty since he was living in Virginia. The employee is entitled to court leave under 5 U.S.C. § 6322 even though he did not advise the court of facts that might have excused him from jury service. C. Robert Curran, B-217845, September 18, 1985 (64 Comp. Gen. 851).

Return to duty when excused by court (5-15) -- An employee who resided in Virginia and whose permanent duty station was Washington, D.C., was summoned to jury duty in New Jersey for a one-week period beginning on a Monday. The employee is entitled to court leave for the Friday he was excused from jury duty under the holding in 26 Comp. Gen. 413 (1946). In view of the substantial distance involved, it would have imposed a hardship to have required the employee to return to his permanent duty station following a day of jury service on Thursday to report for duty on Friday. C. Robert Curran, B-217845, September 18, 1985 (64 Comp. Gen. 851).

Service as a witness (5-17)

Testimony by members of plaintiff association (New)

Seven Administrative Law Judges (ALJs) served as witnesses for the plaintiff in Association of Administrative Law Judges, Inc. v. Heckler, Civil Action No. 83-0124 (D.D.C.), which was brought to challenge certain practices of the Social Security Administration in the management of ALJs and their caseloads. The ALJs are entitled to court leave under 5 U.S.C. § 6322(a)(2) for necessary travel time, time spent testifying, and time waiting to testify. Although each judge is a member of the plaintiff association, none of them is an individual plaintiff nor is the lawsuit maintained as a class action. They are not precluded from court leave under our decisions holding that such leave is not available to an employee who is a party to the lawsuit. Administrative Law Judges, B-215528, January 22, 1985 (64 Comp. Gen. 200).

D. MILITARY LEAVE

Administration of military leave

Full-time and field training (5-25)

Military leave was denied and annual leave was charged by the employing agency to a former employee of the Government Printing Office and member of the District of Columbia National Guard because the employee had used his 15-day annual allotment of military leave under 5 U.S.C. § 6323(a) during annual training. The employee, as a member of the D.C. National Guard, was also eligible to take military leave for annual training under 5 U.S.C. § 6323(c), which is not subject to the 15-day ceiling. In view of this, subsection 6323(c) leave may be substituted for subsection 6323(a) leave for annual training in order to cover the time he was charged annual leave. Thomas J. Callahan, B-218763, November 26, 1985.

E. HOME LEAVE

Return to overseas post requirements (5-28)

Failure to complete service under new agreement (5-3 of 1985 Supplement)

See also Ann McCarthy, B-216935, September 17, 1985.

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CHAPTER 2

APPLICABILITY AND GENERAL RULES

SUBCHAPTER I -- APPLICABILITY

B. Specific classes of persons covered (2-1)

U.S. Tax Court commissioners (New)

Prior to October 1, 1982, the travel entitlements of commissioners (Special Trial Judges) of the U.S. Tax Court (established under Article I of the Constitution), were tied by 26 U.S.C. § 7456(c) to the entitlements of commissioners of the U.S. Court of Claims (established under Article III of the Constitution). Upon abolishment of the Court of Claims and its commissioner system in 1982, 26 U.S.C. § 7456(c) was amended to designate subchapter I of chapter 57 of Title 5, U.S.C., as governing Tax Court commissioner's travel, effective October 1, 1982. Under subchapter I, travel of judicial branch employees is governed by regulations of the Administrative Office of the U.S. Courts, and travel of other employees covered by that subchapter is governed by the FTR. Since the U.S. Tax Court, as an Article I court, is not within the judicial branch, the travel entitlement of its commissioners is governed by the provisions of the FTR, effective October 1, 1982. U.S. Tax Court - Travel Entitlements of Special Trial Judges, B-215525, January 17, 1985.

SUBCHAPTER II -- GENERAL RULES AND DEFINITIONS

C. Travel agencies

Restrictions on use (2-28)

An Army employee who was unaware of the general prohibition against the use of travel agents purchased coach-class air transportation for official travel from a travel agent. He could be reimbursed for transportation costs which would have been incurred if he had obtained his transportation directly from the carrier. In view of the requirement to purchase such transportation using a GTR, his reimbursement was limited to the lower fare available for transportation procured with a GTR, since the evidence does not establish that his failure to obtain a GTR was for reasons beyond his control. Seymour Epstein, B-213340, April 4, 1985.

Use approved (2-30)

An employee who pays for authorized travel costing in excess of $100 with personal funds contrary to the FTR may be reimbursed the transportation costs which would have been properly chargeable to the Government if the transportation service had been procured with a GTR. The fact that the airline tickets involved were purchased from a travel agent does not affect his reimbursement in this case, since the travel agent was authorized for use by Government travelers under a contract with the GSA. L. Fred Glenn, B-216921, April 2, 1985.

D. Official duty station

Determination question of fact (2-30)

An employee transferred to Pompano Beach, Florida, could not be paid mileage for commuting on weekends between his Orlando residence and his PDY station. The fact that his superior indicated that the assignment to Pompano Beach was temporary, until a position could be found in Orlando, does not change the character of the assignment which otherwise was indefinite in duration, and, thus, permanent in nature. Doubt as to its ultimate duration does not convert an indefinite assignment from permanent to temporary. John J. D'Anieri, B-217574, September 18, 1985.

Corporate limits of city or town (2-32)

National Park Service employees stationed at Saint Croix National Scenic Riverway, Wisconsin, could not be paid per diem for travel within the park prior to the date the Riverway was subdivided into three districts for the purpose of establishing official duty stations for park employees. Barbara J. Voss and Daniel D. Schultz, B-217681, September 30, 1985.

SUBCHAPTER III - ORDERS AND AUTHORIZATION OR APPROVAL OF TRAVEL

C. Written orders requirement

Generally (2-34)

Where a transferred employee reported to his new administrative headquarters location for a period of orientation before reporting to the contractor facility that was to be his new duty station, he could be paid per diem, rather than temporary quarters subsistence expenses for the orientation period, even though his PCS travel orders did not provide for a period of orientation away from his new duty station. The headquarters was located 60 to 70 miles from the contractor facility, and he was directed in advance, in writing, to report to that location prior to beginning his assignment at the contractor's facility. Under these circumstances, the absence of a properly executed travel order form will not prevent payment of appropriate TDY allowances. Gene H. Rhodes, B-218910, October 23, 1985.

E. Modification, cancellation, or revocation of travel authorizations

General rule

Some case examples: (2-36)

A transferred employee of the Defense Contract Audit Agency was authorized travel, relocation, and miscellaneous expenses. He was entitled to retain such expenses, since legal rights and liabilities in regard to per diem and other travel allowances vest when the travel is performed under orders, and such orders, if valid, may not be cancelled or modified retroactively to increase or decrease the rights which have become fixed under the applicable statutes and regulations. Since the original orders were not clearly erroneous, the agency's re-determination 4 years after the fact that the transfer had not been in the best interest of the Government could not be given effect.
Steve W. Fredrick, B-217630, July 25, 1985.

An employee of the Office of International Cooperation and Development (OICD), Department of Agriculture, served a 2-year tour of duty overseas, and was issued a travel authorization to travel from Riyadh, Saudi Arabia, to Fort Collins, Colorado, by way of Washington, D.C., for debriefing. The travel authorization was effectively cancelled when OICD established a position for the employee in Washington, D.C., thus making Washington his PDY station. The employee was entitled to reimbursement of travel and transportation expenses incurred in anticipation of -- and prior to cancellation of -- the travel authorization. Dr. Tommye Cooper, B-213742, August 5, 1985.

An employee served a 2-year tour of duty overseas and was issued a travel authorization to travel from Saudi Arabia to Fort Collins, Colorado, by way of Washington, D.C., for debriefing. While serving a short-term detail in Washington, D.C., the agency agreed to establish a position for him there, and he signed an agreement to remain in Government Service for 1 year. Since the employee was notified while at the TDY station that it had been changed to his PDY station, he could be reimbursed for round-trip travel and transportation expenses incurred between Washington, D.C., and Fort Collins for the purpose of arranging for the movement of his family and household effects, and assisting in other matters incident to the relocation. Dr. Tommye Cooper, B-213742, August 5, 1985.

Travel orders may not be changed retroactively to increase or decrease entitlements after travel is performed. Where a travel order was altered after it was signed to permit travel by POV as in the interest of the Government, the employee should be limited to reimbursement of the cost that would have been incurred by common carrier, unless it is shown that the provision authorizing travel in the Government's interest was a part of the approved travel when the travel was performed. Julie M. Gunderson, B-215569, January 11, 1985.

Competent orders (2-37)

Two ambassadors resigned their positions and returned to Washington, D.C., pending nomination and confirmation for new duty posts. Under existing agency procedures, the ambassadors were transferred to Washington after 50 days, even though both were shortly thereafter transferred to their new duty posts. Where the ambassadors claim only TDY expenses while in Washington, and where the agency did not intend to transfer these two ambassadors to Washington between assignments, we did not object to the agency issuing amended travel orders treating the entire period in Washington as TDY. Peter J. DeVos and Terence A. Todman, B-214519, February 19, 1985.

Absence of travel orders (2-38)

An employee appointed to a manpower shortage position was not issued orders authorizing travel and transportation allowances to his first duty station, but was advised that family travel and transportation of HHG had to be accomplished within 1 year. Since these entitlements are in accordance with the statute and regulations, original orders by competent authority to perform the travel and transportation could be issued. Such orders could permit travel within the 2-year period authorized by the FTR, unless there is a mandatory agency regulation limiting travel and transportation in these circumstances to 1 year after the appointment. Dr. Chih-Wu Su, B-217723, August 12, 1985.

CHAPTER 3

PURPOSE FOR WHICH TRAVEL MAY BE AUTHORIZED

D. Failure to enter on duty (3-1)

An employee stationed in Rome, Italy, was transferred to the U.S. and later discharged for failure to report for duty in the U.S. Notwithstanding the MSPB order requiring her reinstatement, she could not be reimbursed for travel from Rome to the U.S. on the basis of her transfer, since she never reported for duty in the U.S. Colegera L. Mariscalo, B-214873, June 25, 1985, 64 Comp. Gen. 631.

F. Training

Per Diem versus station allowance (3-2)

An employee was sent to a location away from his old duty station for long-term training to be followed by a PCS to a then undetermined location. The employee claimed reimbursement for his move to the training site as a PCS move, since he was promoted for the purpose of that travel under an agency merit promotion program. Since travel to a location for training contemplates either a return to the old duty station or another PDY station upon its completion, a training site is but an intermediate duty station. Until the employee is actually transferred to a new PDY station, the duty station from which he traveled to the training site remains his PDY station. John E. Wright, B-216197, February 19, 1985, 64 Comp. Gen. 268.

H. Temporary duty (3-2)

Effect of early arrival on entitlement (See TRAVEL, Supp. 1984, p.3-1)

A handicapped employee claimed reimbursement for additional subsistence expenses he incurred when he arrived at his TDY site several days early, and then delayed returning to his official duty station, in order to avoid driving in inclement weather. We held that the employee could be reimbursed for the additional subsistence expenses, because he acted prudently in incurring those expenses. Furthermore, reimbursement was justified as a "reasonable accommodation" to the employee under the Rehabilitation Act of 1973. Steve Stone, B-216119, February 26, 1985, 64 Comp. Gen. 310.

CHAPTER 4

TRANSPORTATION

SUBCHAPTER I -- TRANSPORTATION ALLOWABLE

A. Authorized modes of travel

Use of U.S. flag vessels (4-1)

The Foreign Service Travel Regulations impose "personal financial responsibility" on employees for using a foreign-flag vessel under certain conditions. Since those regulations do not specify the amount of financial responsibility, they may be interpreted as precluding reimbursement of any part of the cost of such travel only if an American-flag vessel is also available. If American-flag vessels are not available, then the regulations are viewed as imposing financial responsibility for such use to the extent that the cost of the foreign-flag vessel exceeds the constructive cost of less than first-class airfare. Foreign Flag Vessels, B-216208, February 27, 1985, 64 Comp. Gen. 314.

Use of U.S. air carriers - The Fly America Act

Fly America Act applicability (4-3)

Under 49 U.S.C. App. § 1518 employees of the Department of State and three specified foreign affairs agencies are exempt from the requirement of 49 U.S.C § 1517 to use U.S. air carrier service available between two points, both of which are outside the U.S. Even though they held Foreign Service positions and performed functions transferred from the Department of State subsequent to the enactment of section 1518, employees of the Department of Commerce are not within the scope of its exemption. Department of Commerce - Applicability of Exemption from Fly America Act, B-217483, August 2, 1985.

Transportation purchased with other than appropriated funds

Transportation paid by foreign government (4-4) -- See also Fly America Act's Applicability, B-218921, December 26, 1985.

Mode of transportation to be used is the one most advantageous to the Government

Use of other than authorized mode

Limited to constructive cost (4-16) -- An employee claimed reimbursement on the basis of constructive cost where he and his family performed PCS travel from Frankfurt, Federal Republic of Germany, to Denver, Colorado, by a mode of transportation other than that authorized, and by an indirect (i.e., circuitous or not usually traveled) route. Instead of flying, they took the Queen Elizabeth II, a foreign-flag ocean vessel, to New York and drove by POV from New York to Denver. The employee's constructive cost comparison should be based only on the portion of his trip from Frankfurt to New York, since the FTR specifies that POV use for the portion of travel from New York to Denver is deemed to be advantageous to the Government. Paul S. Begnaud, B-214610, February 19, 1985.

Where an agency's internal travel policy limited PCS air travel by employees and their families to the "coach class" fare, the "coach class" fare is the proper measure for constructive cost reimbursement. Paul S. Begnaud, B-214610, February 19, 1985.

B. Other expenses incident to transportation

Duplicated tickets (4-17)

Through a boarding error, an employee used his airline ticket to travel to the wrong destination. After he discovered the error, the employee spent $119 in personal funds to secure a ticket for the proper destination. The employee could be reimbursed for the cost of the airline ticket, notwithstanding the $100 cash limitation stated in the FTR, because the cash purchase was justified by the circumstances and the employee submitted documentation of the cost of the transportation. John T. Davis, B-216633, March 27, 1985.

SUBCHAPTER III - RULES ASSOCIATED WITH USE OF COMMERCIAL TRANSPORTATION

B. Taxicabs

Between lodging and food facility (4-31)

An employee on TDY claimed taxicab fares to travel to restaurants away from the general area of her lodgings. The employee's claim was denied, since the record supported the agency's determination that the employee traveled to the restaurants for reasons of personal preference and not because adequate facilities were unavailable in the area of her lodgings. Mary V. Embry, B-218984, December 18, 1985.

C. Rental automobiles and special conveyances

Official business (4-32)

An employee was reimbursed for the costs of renting an automobile to transport his personal effects from his PDY station to his TDY site, and for local transportation at his TDY station. The employee could not retain full reimbursement for the automobile rental charges, since the rental was not approved based on a determination of advantage to the Government, and there is no authority to reimburse rental costs for periods in which no official business is performed. However, the employee could retain reimbursement attributable to his use of the rental car for official travel, limited to the constructive cost of transportation by a more advantageous mode. Bertram C. Drouin, B-216016, January 22, 1985, 64 Comp. Gen. 205.

E. Special fares

Constructive cost comparison includes discounts (4-37)

An employee of the Department of the Interior contended that a certifying officer's computation of his comparative cost reimbursement for TDY travel and our decision Floyd L. Klavetter, B-215285, December 13, 1984, which sustained the computation, were based on erroneous facts. Both were based on a one-way coach airfare of $143 published in the Official Airline Guide and schedules satisfying the employee's duty requirements while minimizing per diem. Where upon reconsideration it was found that carriers' passenger tariffs restricted the fare to night-coach travel, the employee was entitled to additional reimbursement based on the lowest one-way fare ($204) available to meet the employee's travel requirements without increasing per diem. Floyd L. Klavetter, B-215285, May 10, 1985.

Government vehicle not a common carrier for computation purposes (New)

An employee and his agency disagreed over the proper computation of the cost of a Govenment vehicle in determining the employee's constructive travel claim between his headquarters and TDY station. However, for the purposes of the constructive cost of common carrier transportation, the cost of a Government vehicle may not be used, since it is defined in the FTR as a special conveyance and not a common carrier. Thomas L. Wingard-Phillips, B-216820, April 1, 1985, 64 Comp. Gen. 443.

Local travel at TDY station not includable for computation purposes (New)

An employee, in computing his constructive travel claim, claims parking fees at the TDY location. Paragraph 1-4.3 of the FTR provides a limit on reimbursement based on the constructive cost of traveling to and from the TDY area. Thus, local travel costs at the TDY area are separate from constructive travel costs to and from the TDY area. The employee should be reimbursed for only those local travel costs actually incurred without limitation by constructive cost. Thomas L. Wingard-Phillips, B-216820, April 1, 1985, 64 Comp. Gen. 443.

No tolls or parking fees added (4-55)

But see Ross R. Kittleman, B-216118, June 20, 1985, in which it was held that an employee authorized to drive his POV to his TDY station as a matter of personal preference may be reimbursed parking fees for keeping his vehicle at that location until his return trip, provided the total costs by that means of travel, including the parking, were less than the constructive cost of travel by commercial air. In addition to mileage, reimbursement of reasonable parking fees for official travel is authorized under FTR para. 1-4.1c, unless travel orders or other administrative provisions restrict their allowance. Similar authorization in 2 JTR paras. C2152 and C4654 comforms to the FTR. Under the circumstances, the inconsistent prohibition in 2 JTR para. C4661-26, denying parking reimbursement for a POV used as a matter of personal preference, is disregarded.

SUBCHAPTER IV -- REIMBURSEMENT FOR USE OF PRIVATELY-OWNED CONVEYANCES

A. Mileage payments

Discretionary authority or approval

Travel in the vicinity of headquarters (4-44)

An Army employee whose use of his POV was determined to be advantageous to the Government was entitled to mileage for travel on a daily basis between his place of abode and his alternate duty point under 2 JTR. Under paragraph C2153, DOD components do not have discretion to limit the payment of mileage to the mileage amount by which an employee's travel to the alternate duty site exceeded his commute between his residence and his PDY station. Talmadge M. Gailey, B-220110, December 17, 1985, 65 Comp. Gen. ___.

Travel in the vicinity of TDY station (4-45)

An employee was authorized actual subsistence expenses to perform TDY in Washington, D.C. He incurred transportation expenses to obtain meals on various days and at distances ranging from 2 to 112 miles, roundtrip. The FTR allows expenses of travel to obtain meals as part of actual subsistence expenses, but such expenses must be necessarily and prudently incurred, and reasonable in nature. Where the expenses claimed appear largely unnecessary and unreasonable, and the employee failed to provide additional justification, the agency acted properly in denying the employee's claim. Eugene J. Maruschak, B-216753, October 3, 1985, 65 Comp. Gen. 10.

D. Privately-owned conveyance in lieu of common carrier

Computation of constructive cost (4-52)

Constructive cost of transportation to the airport (New)

An employee, in computing constructive travel by common carrier, claimed mileage and parking as if his spouse drove the employee to and from the airport. However, for computing constructive travel costs, only the usual taxicab or airport limousine fares, plus tip, should be used for comparison purposes. Thomas L. Wingard-Phillips, B-216820, April 1, 1985, 64 Comp. Gen. 443.

G. Gifts or prizes acquired in the course of official travel (4-39)

Discount coupons and other benefits received in the course of official travel (See TRAVEL, Supp. 1985, p.4-1)

An employee who used airline bonus credits earned as a result of official travel to purchase an airline ticket for her husband was indebted to the Government for the cost of that travel. That indebtedness, arising out of the misuse of travel benefits belonging to the Government, could not be waived or otherwise excused, even though the employee may have been erroneously advised by agency travel officials that there were no instructions regarding the personal use of such benefits. Henriette D. Avram, B-216822, March 18, 1985.

An employee asked whether he could make personal use of non-transferable bonus lodging points earned as a result of a combination of Government-funded and personal travel. Any travel promotional materials received as a result of the expenditure of Federal funds are the property of the Government, and must be relinquished to an appropriate agency official. Since the bonus lodging points here were earned in part by Government-funded travel, the employee could not make personal use of them. Johnny Clark, B-215826, January 23, 1985.

CHAPTER 5

OTHER EXPENSES ALLOWABLE

A. Baggage

Dependent's baggage (5-2)

Federal agencies and officials must act within the authority granted to them by statute in issuing regulations. The construction of a statute as expressed in implementing regulations by those charged with its execution, however, is to be sustained in the absence of plain error, particularly when the regulations have been long followed and consistently applied with Congressional assent. Hence, regulations of the Secretary of State in effect since 1960 authorizing shipments of unaccompanied baggage for the student-dependents of Federal civilian employees stationed overseas on occasions when those dependents travel to and from schools located in the U.S., issued under a statute broadly authorizing reimbursement of their "travel expenses," are upheld as valid. Student-Dependents of Government Personnel Stationed Overseas-Baggage Shipments, B-217025, March 4, 1985, 64 Comp. Gen. 319.

Further, a statute enacted in 1983 provides that under regulations prescribed by the Secretary of Defense, members of the Uniformed Services stationed overseas may be paid a "transportation allowance" for their dependent children who attend school in the U.S. The legislative history reflects that Congress intended to provide service members with benefits similar to those authorized by a law enacted in 1960 to cover the "travel expenses" of the student-dependents of civilian employees stationed overseas. Regulations of the Secretary of State under the 1960 enactment properly include provision for unaccompanied personal baggage shipments, so that there is no objection to a similar provision adopted through regulation by the Secretary of Defense under the 1983 enactment, since related statutes should be construed together in a consistent manner. Student-Dependents of Government Personnel Stationed Overseas-Baggage Shipments, B-217025, March 4, 1985, 64 Comp. Gen. 319.

C. Miscellaneous travel expenses (5-5)

Meals at Government expense on Government aircraft (New)

Absent specific statutory authority, a Federal agency may not provide meals at Government expense to its officers, employees, or others. This general prohibition extends to in-flight meals served on Government aircraft, although it does not apply to Government personnel in a travel status for whom there is specific statutory authority to provide meals. Hence, the National Oceanic and Atmospheric Administration could not provide cost-free meals to those aboard its aircraft on extended flights engaged in weather research, except for Government personnel in a travel status. Provision of Meals on Government Aircraft, B-218672, October 17, 1985, 65 Comp. Gen. 16.

Meetings

Food (5-8)

Meals at headquarters (New) -- A Customs Patrol Officer on an extended surveillance assignment at his headquarters, who was required to remain in a motel room for several days, could not be reimbursed for meal expenses. Absent specific statutory authority or exigent circumstances involving danger to human life or the destruction of Federal property, the Government could not pay the subsistence expenses or furnish free food to employees performing duty at their headquarters. Customs Patrol Officer - Meal Expenses at Headquarters, B-217261, April 1, 1985.

Luncheons at headquarters (5-8) -- An employee was invited to speak at a luncheon session of an agency training program at her PDY station, and sought reimbursement of the cost of the luncheon. The cost of the luncheon could be paid under 5 U.S.C. § 4110, since the record indicated that (1) the meal was incidental to the training program, (2) attendance at the meal was necessary for full participation in the meeting, and (3) the attendees were not free to take their meals elsewhere. Ruth J. Ruby, B-219177, December 19, 1985, 65 Comp. Gen. ___.

Employees of the National Park Service sought reimbursement for meal costs incurred while attending a monthly Federal Executive Association luncheon meeting. Meal costs could not be reimbursed. The meetings were held at the employees' official duty station and the employees' meals were not incidental to the meetings, a prerequisite for reimbursement, since the meetings took place during the luncheon meals. Gerald Goldberg, et al., B-198471, May 1, 1980, explained. Randall R. Pope and James L. Ryan, B-215702, March 22, 1985, 64 Comp. Gen. 406.

Other expenses (5-10)

Pet care (See TRAVEL, Supp. 1984, p. 5-2)

Pet care expenses incurred by a Federal employee while on TDY are not reimbursable, since neither the statute nor the applicable regulations governing the reimbursement of travel expenses authorize payment for such expenses. Michael J. Washenko, B-219094, December 5, 1985.

CHAPTER 6

PER DIEM

A. General provisions (6-1)

Actual performance of travel (New)

An employee claimed that his agency's refusal to allow him to perform two TDY assignments constituted an unfair labor practice under 5 U.S.C § 7116, and that he was entitled to the per diem, overtime compensation, and holiday premium pay he would have received had he performed the assignments. The GAO may not consider allegations concerning unfair labor practices, since the Federal Labor Relations Authority has exclusive jurisdiction to decide such complaints. In any event, the employee was not entitled to per diem, since that allowance is authorized only if an employee actually performs official travel. Emery J. Sedlock, B-199104, February 6, 1985.

Per diem at headquarters

Extraordinary circumstances (6-3)

An employee may not receive travel per diem or subsistence expenses in the area of his official duty station. Thus, an employee recalled to his PDY station for medical reasons while on a TDY assignment may not be reimbursed for his subsistence expenses there, notwithstanding his contention that it was unsafe for him to return to his permanent place of abode at his duty station because of threats of mob violence. Fraudulent Travel Voucher, B-217989, September 17, 1985.

D. Interruptions of per diem entitlement

Voluntary return travel

Generally (6-21)

An employee on TDY who used the return portion of a "super saver" airline ticket for his weekend voluntary return travel to his PDY station claimed that the difference between the regular one-way coach fare and the "super saver" fare should be used in the computation of the maxium allowable reimbursement for his voluntary return travel. He argued that the "super saver" fare applied only to round-trips, and if he had not used the return portion, the Government would have had to pay the full coach fare for his travel to the TDY point, because his other travel was performed by automobile with another employee. The agency properly limited his reimbursement to the per diem which he would have received if he had remained at the TDY station. There is no basis to include costs other than those the employee would have incurred had he remained at his TDY station. Hugo H. Huslig, B-216261, February 4, 1985, 64 Comp. Gen. 236.

An employee traveled home on several nonworkdays during his TDY assignment, but claimed meal expenses without interruption for this travel. We held that the employee was not entitled to reimbursement for meal costs incurred at home, because the FTR prohibits payment of subsistence expenses at an employee's official station or residence from which he commutes daily to that station. Since the employee admitted that he traveled home on several occasions, and he was not entitled to reimbursement, we would not object to the disallowance of meal expenses for the nonworkdays based on an average of the employee's daily meal costs. Fraudulent Travel Claim, B-217686, June 20, 1985.

Indirect route or interrupted travel

Generally (6-22)

See also National Security Agency Employee - Applicability of Per Diem - Europe - Nonworkday Travel, B-217797, September 12, 1985.

F. Rates

Rates fixed by agencies

Reduced per diem

Staying with friends or relatives --

Generally (6-33)

Where an employee occupies non-commercial lodgings while on TDY, he may not be reimbursed for amounts paid to his host using an amount calculated on the basis of charges for comparable lodgings. In the absence of evidence of the expenses incurred by the host, only the reasonable minimal daily amount established under agency regulation is reimbursable. Fraudulent Travel Voucher, B-217989, September 17, 1985.

Increases and decreases in per diem rates

Increases in maximum rates (6-38)

Union agreement to use subsequent survey (New) -- An employee of Department of Health and Human Services received travel orders which prescribed a per diem rate of $41 per day, but indicated a "final rate" would be established after the performance of a survey, which was required by an agreement established between the employee's union and the agency. The survey was not completed until after the travel was performed. Under the circumstances of this case, the general rule prohibiting the retroactive increase of benefits is not applicable, since the final per diem rate had not been established at the time of travel. Mary Lou Young, B-217852, September 30, 1985.

CHAPTER 7

ACTUAL SUBSISTENCE EXPENSES

A. Authorities (7-1)

A Forest Service firefighter was authorized reimbursement on an actual subsistence expense basis in lieu of a per diem rate of $5. The firefighter argued that the FTR, paragraph 1-8.1c, authorizes reimbursement on an actual subsistence basis only where unusual circumstances exist. The Forest Service believed that unusual circumstances existed because the firefighters were working in remote areas where food and lodging is not normally available and is provided by the Forest Service. It believed that reimbursement on an actual subsistence expenses basis would ensure that only those employees that actually incurred expenses would be reimbursed, and cited further administrative savings realized by a reduction in the number of travel vouchers that would have to be processed. The Forest Service could not authorize the firefighters actual subsistence expenses, since FTR paragraph 1-8.1c provides that actual subsistence expenses may be authorized where the authorized per diem would be insufficient to cover expected expenses. Therefore, the firefighter could be paid the claimed per diem. Frank C. Sanders, B-217383, September 5, 1985, 64 Comp. Gen. 825.

B. At duty station (7-1)

See also Department of Housing and Urban Development - Excess Subsistence Expenses - Subsistence at Official Duty Station, B-217011, April 1, 1985, 64 Comp. Gen. 447.

D. Travel to an HRGA

Lodging with friends or relatives (7-4)

An employee who was transferred from Chicago to Springfield, Illinois, thereafter performed TDY travel on an "as required" basis throughout Illinois, including Chicago, where his family continued to reside. His subsistence expenses while staying with his family in Chicago were administratively disallowed, since he stayed at his family's residence. Since Springfield was the employee's PDY station, the fact that he stayed with his family while on TDY does not bar reimbursement of his travel expenses. Algie Horton, Jr., B-215502, September 30, 1985, 64 Comp. Gen. 902.

H. Agency responsibilities

Review and administrative control (7-10)

An employee who attended a meeting sponsored by a private organization in an HRGA was provided a lunch and dinner without cost to the Government. Under 5 U.S.C. § 4111 and para. 4-2.1 of the FTR, the employee's reimbursement for actual subsistence expenses -- which was limited to $75 per day -- need not be reduced by the value of the provided meals. Agencies have considerable discretion to determine the extent to which travel allowances must be offset by the amount of a private contribution. Neither the statute nor its implementing regulations expressly require an agency to reduce an employee's entitlement to other subsistence expenses actually incurred by the value of a private contribution. Walter E. Myers, B-216170, January 8, 1985, 64 Comp. Gen. 185.

An employee performed TDY travel to an HRGA and stayed with his family while there. He was authorized reimbursement on an actual expense basis, but claimed reimbursement of one-half of the actual expense rate, as authorized by agency regulations. Paragraph 1-8.1b of the FTR grants an agency head discretionary authority to authorize a special per diem in lieu of actual expenses in HRGA's under certain circumstances. Where the agency has established a special per diem rate for non-commercial quarters in HRGA's, that special rate satisfies the requirements of the FTR. The determination to apply that rate need not be made on a case-by-case basis. Jack O. Padrick, B-189317, November 23, 1977, and similar cases will no longer be followed to the extent that they require a separate determination to apply a pre-established fixed rate for each individual case. Algie Horton, Jr., B-215502, September 30, 1985, 64 Comp. Gen. 902.

E. Unusual circumstances

Overnight stay in HRGA (7-7)

A savings to the Government as the result of taking a rest stop in an HRGA within the conterminous U.S., rather than in Hawaii, is not an "unusual circumstance" under paragraph 1-8.1c of the FTR that would justify the payment of actual subsistence expenses at the intermediate stopover point. The employee could only be reimbursed the per diem rate. Gerald K. Kandel, B-214902, December 17, 1984, affirmed. Gerald K. Kandel, B-214902, August 20, 1985.

G. Authorized reimbursement

Exceeds statutory maximum (7-9)

The HUD requested a decision on whether foreign delegations on invitational travel and their official HUD escorts may be paid subsistence expenses exceeding the statutory limitation for Federal travel reimbursement. We find no basis to make an exception to the statutory limitation in this case. United States Information Agency, B-209375, December 7, 1982, distinguished. Department of Housing and Urban Development - Excess Subsistence Expenses, Subsistence at Official Duty Station, B-217011, April, 1, 1985, 64 Comp. Gen. 447.

CHAPTER 9

SOURCES OF FUNDS

C. Contributions from private sources -- 18 U.S.C. § 209

Application of 18 U.S.C. § 209 to travel

Exceptions (9-3)

See Also Walter E. Myers, B-216170, January 8, 1985, 64 Comp. Gen. 185.

CHAPTER 10

CLAIMS FOR REIMBURSEMENT

B. Fraudulent claims (10-1)

An agency recouped subsistence expenses advanced to an employee, determining that he had fraudulently claimed the payment of maid tips on each day of a 19-day TDY assignment. We found that the agency sustained its burden of proving that the employee filed a fraudulent subsistence claim for one of the days, but that its evidence was insufficient to overcome the presumption of honesty and fair dealing in favor of the employee for the remaining 18 days. Accordingly, the employee could recover subsistence expenses for the 18 days which are not tainted by fraud. However, the agency could reduce reimbursement for maid tips, if it determines that the claimed amounts are unreasonably high. Civilian Employee of the Department of the Navy - Suspected Fraudulent Claim for Subsistence Expenses, B-213624, May 10, 1985. See also: Civilian Employee of the Department of the Navy - Suspected Fraudulent Claim for Subsistence Expenses, B-219051, November 27, 1985; Civilian Employee of the Department of the Navy - Suspected Fraudulent Claim for Subsistence Expenses, B-213620, March 14, 1985; Civilian Employee of the Department of the Navy - Suspected Fraudulent Claim for Subsistence Expenses, B-213629, January 17, 1985; and Fraudulent Travel Claim, B-214130, January 11, 1985.

An agency denied an employee's claim for subsistence expenses, determining that he had submitted a false claim for private lodging expenses. We held that the employee's claim for subsistence expenses during the period he resided in a private residence must be disallowed in its entirety, because the record shows that the employee knowingly provided false information in support of his lodging claim. Fraudulent Travel Claim, B-217689, August 22, 1985. See also: Fraudulent Travel Voucher, B-217989, September 17, 1985; and Fraudulent Travel Claim, B-217687, August 22, 1985.

C. Records of travel and expenses

Evidence sufficiency (10-4)

An agency denied an employee's claim for subsistence expenses, determining that his claim for lodging in a privately-owned apartment was of doubtful validity. Although we found that the agency's evidence was insufficient to establish fraud on the part of the employee, the present record did not support payment of his private lodging expenses. Specifically, the employee did not show that the expenses resulted from a business arrangement or, alternatively, that they reflected additional costs incurred by his host. Fraudulent Travel Claim, B-217686, June 20, 1985.

Actual subsistence (10-4)

Expense incurred (New) -- An employee who used a free airline ticket issued because of her husband's membership in an airline's frequent travelers club for travel on Government business could not be reimbursed the constructive cost of the airline ticket, since she had not demonstrated that she paid for that ticket or had a legal obligation to do so. Thus, it was concluded that she acquired the transportation at no direct personal expense. Martha C. Biernaski, B-215897, December 31, 1985, 65 Comp. Gen. ___.

Receipts required (10-5) --

Disparity between receipts (New)

An agency denied an employee's claim for subsistence expenses, determining that he had misstated his motel expenses for 3 days because the payments recorded on his receipts were higher than those entered into the motel records. We found that the agency's evidence was insufficient to establish fraud on the part of the employee, but that the employee had not sustained his burden of proving the Government's liability for motel expenses at the higher rate shown on his receipts. Accordingly, reimbursement for the 3 days' lodging expenses was limited to amounts documented in the motel records. A lodging claim for an additional day was also denied, since the motel's payment records indicated that payment was not received, nor had a receipt been furnished. Fraudulent Travel Claim, B-217689, August 22, 1985. See also: Fraudulent Travel Claim, B-217687, August 22, 1985; and Fraudulent Travel Claim, B-217686, June 20, 1985.

Third-party receipts (New)

An employee, who performed TDY travel, asserted a claim for lodging expenses incident to that travel. That claim was denied by GAO in Richard E. Garofalo, B-213777, October 2, 1984, since FTR para. 1-8.5 required documentation of the incurrence of lodging expenses, and the documents submitted were inconsistent, incomplete, and did not convincingly support the claim. On reclaim, the earlier denial was sustained. The additional information submitted did not demonstrate that the individual who provided lodging to the employee received payment, or the amount thereof. There was no direct evidence to establish that the real estate agent to whom he made payment represented the owner of the residence where he stayed while on TDY. Richard E. Garofalo, B-213777, June 3, 1985.

D. Preparation of voucher (10-8)

On a reclaim voucher, an employee requested reimbursement for nine meals prepared at his lodging which had been listed as no charge items on his original voucher. Where the inconsistent items are due to a lack of understanding of the standards governing reimbursement, rather than fraud or dishonesty, and there is no other basis for questioning the accuracy or validity of the reclaim items, those items may be paid. John V. Lovell, B-215287, September 12, 1985.

CHAPTER 12

TRAINING

B. Relocation expenses or per diem

Agency discretion (12-3)

An employee received a PCS, with long-term training at an intermediate location en route. The employee claimed travel and relocation expenses to the training location under 5 U.S.C. §§ 5724 and 5724a. Although PCS expense reimbursements are governed by sections 5724 and 5724a, travel and transportation rights for long-term training are specifically governed by 5 U.S.C. § 4109. Hence, an employee's entitlements for travel to a training location are limited by those provisions. Since an agency is authorized to limit reimbursement under section 4109, where the employee was informed before being accepted into the training program that all travel and transportation expenses to the training site would have to be borne by him as a condition of acceptance, and all trainees were treated equally, his travel and transportation expenses to the training location could not be certified for payment. John E. Wright, B-216197, February 19, 1985, 64 Comp. Gen. 268.

CHAPTER 13

SPECIAL CLASSES

SUBCHAPTER II -- OTHER SPECIAL CLASSES

B. Intergovernmental Personnel Act

No entitlement to both per diem and change of station allowances (13-17)

An employee may not elect to receive per diem for the duration of an IPA assignment where his agency's determination to authorize PCS allowances is reflected in his travel orders and his IPA agreement. Under 5 U.S.C. § 3375, an agency may authorize PCS allowances or per diem, but not both, and we have held that per diem would ordinarily be inappropriate for IPA assignments of 2 years. Ronald C. Briggs, B-216431, July 5, 1985, 64 Comp. Gen. 665.

Relocation expenses on completion of assignment (13-18)

The PCS allowances authorized by 5 U.S.C. § 3375 are payable upon relocation to, as well as return from, an IPA assignment. The fact that an employee's family was residing at the location of his assignment, and that the full range of allowances, therefore, was not authorized when the employee reported to the university, does not preclude payment of any or all of those allowances incident to the employee's return following completion of the assignment. There is no statutory or regulatory requirement that the employee be authorized or incur specific expenses in reporting to the IPA assignment as a condition to paying those expenses upon its termination. Ronald C. Briggs, B-216431, July 5, 1985, 64 Comp. Gen. 665.

D. Witnesses (other than Government employees testifying in their official capacities) (13-21)

Separated Government employee (See TRAVEL, Supp. 1985, p.13-1)

Employees who are ordered reinstated may be reimbursed for travel to attend their hearings. However, an employee's travel while in an annual leave status, 5 months prior to the hearing, over 2 months prior to the effective date of discharge, and over 3 weeks prior to the issuance of a notice of a proposed adverse action, cannot be equated with travel to attend a hearing. Such travel is governed by the rule which applies to travel away from an employee's PDY station while on approved leave. Under this rule, the Government is responsible only for the cost of travel from the leave location to the location of the hearing. The claim for travel to the leave location was denied. Colegera L. Mariscalo, B-214873, June 25, 1985, 64 Comp. Gen. 631.