

A. Reboyer
P.L. II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

610
00412

9045

FILE: B-193197

DATE: February 5, 1979

MATTER OF: Mr. Michael G. Pond

DIGEST: Where an employee is sent on a 2-year training assignment overseas under 5 U.S.C. 4109 and is authorized to have his immediate family accompany him, his entitlements to travel and transportation allowances at Government expense on their behalf are limited to those allowances specifically prescribed in that section not to exceed employee's estimated aggregate per diem payable, rather than those prescribed for permanent change-of-station assignments, since assignments for training purposes only, are not permanent duty assignments. Since the terms "nontemporary storage of household goods" and "shipment of privately owned vehicles" are not allowances prescribed in that section, neither they, nor related costs, i.e., round-trip travel to pick up a shipped vehicle at port of debarkation, may be reimbursed under that section.

This action is in response to correspondence dated September 11, 1978, with enclosures (reference Serial: N41/400), from the Chief, Finance and Accounting, Central Security Service, National Security Agency (NSA), requesting an advance decision as to the propriety of making payment on a voucher in favor of Mr. Michael G. Pond, an employee of that agency, representing reimbursement for round-trip transportation costs incurred in traveling to and from his residence to a port terminal to pick up his privately owned vehicle (POV) in conjunction with return travel from an overseas station to the United States in 1978. This correspondence was forwarded to this Office by second endorsement of the Per Diem, Travel and Transportation Allowance Committee dated October 12, 1978, and has been assigned PDTATAC Control No. 78-41.

The submission states that the employee was sent by NSA on a 2-year training assignment overseas at the United States Army Institute for Advanced Russian and European Studies in Garmisch, Germany. Following completion of that training the employee performed return permanent change of station (PCS) travel from there to Fort George G. Meade, Maryland, under authority of Travel Orders TP8G0015, issued April 11, 1978. Subsequent to

for Employee and Family
[EXPENSE ALLOWANCES] Not To Exceed Employee's
Estimated Aggregate PER DIEM

~~003423~~

del

B-193197

completion of the travel, but incident thereto, he performed travel from his residence in Millersville, Maryland, to Bayonne, New Jersey, and return, to pick up his POV which had been shipped from Germany.

The submission points out that over the past few years there has been a great deal of correspondence and numerous discussions both in-house and with other Government agencies relative to the scope of benefits to which employees on training assignments are entitled. The question has been whether the movement of employees to and from the United States Army Institute at Garmisch, Germany, for training is or is not a PCS move so as to entitle such employees to all PCS benefits, including nontemporary storage of household goods and shipment of a POV.

As background, enclosed with the submission were copies of miscellaneous correspondence relating to the matter of these entitlements. It seems that in 1974, NSA was authorized by the Civil Service Commission to send a limited number of employees overseas for training on a PCS with limited benefits. This authority apparently was continued on an annual basis through fiscal year 1977. In 1978, NSA sought an extension of that authority. In so doing, the specific point was raised concerning the range of PCS benefits which are payable, referring to the changes made to Volume 2 of the Joint Travel Regulations (JTR) by change 138, April 1, 1977.

According to the submission, NSA prior to that change, had been authorizing payment of nontemporary storage of household goods and shipment of POV's for students on in-country training assignments because the Table of Eligibility in Appendix F of 2 JTR, did not specifically prohibit these entitlements. Change 138, however, changed the language used to describe these training assignments and specifically stated that they were not to be considered a PCS.

A response memorandum dated April 12, 1978, from the Office of the Assistant Secretary of Defense to NSA, advised that movement of dependents and household goods on an employee training assignment was not to be considered a PCS move and the employee was not entitled to PCS allowances. A further response memorandum dated May 25, 1978, also from the Office of the Assistant Secretary of Defense, and enclosing a letter dated May 4, 1978, from the United

B-193197

States Civil Service Commission, granted a further extension of authority to send immediate families, household goods and personal effects of NSA employees undergoing language training in foreign countries.

Apparently, certain NSA officials considered the response of May 25, 1978, to be noncommittal on the question of entitlement to nontemporary storage and POV shipments in connection with training. By memorandum dated June 5, 1978, addressed to the Per Diem, Travel and Transportation Allowance Committee, NSA requested that they be permitted to waive the limitations of 2 JTR relating to travel and transportation entitlements while an employee is attending training courses. By response memorandum dated June 15, 1978, the Committee denied the request for waiver.

In spite of that denial, there is still disagreement as to whether there exists a basic entitlement to nontemporary storage of household goods and shipment of a POV in these cases. Therefore, the following questions are presented for resolution:

"a. As presently written, does the exception granted by the U.S. Civil Service Commission, to 5 U.S.C. 4109, include authority for nontemporary storage and shipment of POV's to and from the training site mentioned herein?

"b. May the language in Enclosure 5 [the letter from Director, Bureau of Training, United States Civil Service Commission to the Deputy Assistant Secretary of Defense, dated May 4, 1978] be interpreted as authorizing nontemporary storage and shipment of POV's?

"c. If the answers to the preceding questions are in the negative, is this Office correct in denying claims for travel to and from ports to deliver and pick up vehicles in connection with movement to and from the overseas training site?"

In addition to those specific question, the submission goes on to state that they have other problem cases which are the reverse of

B-193197

Mr. Pond's situation. Apparently, they have employees who are being transferred from one overseas area to another (an Inter Theatre Transfer (ITT)), with a CONUS stopover when such transfer requires attendance at a course of language training at the Defense Language School, Monterey, California. It is stated that the basic orders are issued reflecting an ITT with training and PCS orders are issued authorizing travel to the language school. Upon completion of the training, new PCS orders are issued for travel from the school to the new overseas location. The submission states that on PCS's as ordered, employees are being authorized the full range of PCS allowances, including per diem for dependents, miscellaneous expense allowances, and temporary quarters subsistence expenses. It is the view of the finance and accounting officer that those enumerated expense items are not payable; however, in light of the before-mentioned controversy the matter is considered unclear. As a result, a decision is also requested on this point.

Payment of travel and transportation expenses relating to periods of training is governed by the provisions of 5 U.S.C. 4109 (1976), which provide in pertinent part:

"(a) The head of an agency, under regulations prescribed * * * may--

* * * * *

"(2) pay, or reimburse the employee for, all or part of the necessary expenses of the training * * * including among the expenses the necessary costs of--

"(A) travel and per diem instead of subsistence * * *;

"(B) transportation of immediate family, household goods and personal effects, packing, crating, temporarily storing, draying, and unpacking * * * when the estimated costs of transportation and related services are less than the estimated aggregate per diem payments for the period of training * * *;"

Regulations implementing the above provisions for civilian employees of the Department of Defense are contained in Volume 2 of the Joint Travel Regulations (JTR). Paragraph C3052 of the regulations (change 78, April 1, 1972), which were in effect at the time Mr. Pond commenced his training assignment, provided in part:

"2. OTHER THAN TEMPORARY DUTY ASSIGNMENT

"a. General. To the extent of the authority provided in 5 U.S. Code 4109, which allows transportation of an employee's family and household goods in lieu of per diem payments, the conditions in subpars. b and c will apply.
* * *

"b. Transportation of an Employee's Family and Household Goods. If the estimated cost of round-trip transportation of an employee's immediate family and household goods between the employee's official duty station and the training location is less than the aggregate per diem payments that the employee would receive while at the training location, such round-trip transportation at Government expense may be authorized in lieu of per diem payments. Such transportation will be in accordance with the provisions of this volume relating to permanent change-of-station movement (see par. C4102).

"c. Employee's Election of Type of Movement. Consideration may be given an election of the employee concerned to be authorized a temporary duty assignment or a permanent change-of-station movement if allowable upon comparison of costs indicated in subpar. a. An initial determination to authorize a permanent change-of-station movement may be changed to a temporary duty assignment any time prior to the beginning of transportation. After transportation begins, the entitlement of the employee and obligations of the Government become fixed and cannot be changed thereafter (39 Comp. Gen. 140)."

Notwithstanding the language contained in the before-quoted JTR provisions, especially the reference in subparagraph c to a permanent

change of station movement as the alternative to a temporary duty assignment, it is clearly evident from the law that all assignments for training purposes are in fact similar in many aspects to temporary duty assignments, i. e., assignments which contemplate travel either to another PCS location following training, or return to the same PCS location, at the time the orders are issued. However, because of the length of the training assignments, it was determined and congressionally approved that it would be in the Government's interest as well as that of the individuals concerned to permit the employee's family to accompany him at Government expense under certain circumstances, a benefit not authorized for TDY travel. It must be recognized that travel for training is not ordinary TDY or PCS travel but is in a class by itself. The authority for payment of the costs of such travel is derived from 5 U. S. C. 4109 by reference to the provisions of chapter 57 of that title. That section provides travel benefits similar to those authorized for temporary duty, but provides limited benefits for long term training assignments.

The authorized parameters of dependents travel for this type of assignment contained in subsection 4109(a)(2)(B) are "transportation of immediate family, household goods and personal effects, packing, crating, temporarily storing, draying, and unpacking," but only "when the estimated costs of transportation and related services are less than the estimated aggregate per diem payments for the period of training."

Because of the use of the term "permanent-change-of-station movement" in subparagraph C3052-2c, difficulties in establishing employee entitlements arose and became the subject of decisions by our Office. While none of those decisions involved the question of entitlement to nontemporary storage of household goods, or shipment of POV's our decisions are universal in disallowing claims for PCS type of expenses incurred by employees while on training assignments which were other than "transportation of immediate family, household goods and personnel effects, packing crating, temporarily, storing, draying, unpacking," when the employee elected to have his family accompany him and such move was administratively approved.

In 1976, in conjunction with decision B-185281, May 24, 1976, involving a claim for temporary quarters subsistence expense by a

Government employee as an incidence of a training assignment, a letter of the same date was addressed to the Executive of the Per Diem, Travel and Transportation Allowance Committee, directing their attention to the fact that a number of employees were being authorized benefits incident to training assignments which were erroneous. Further, that the erroneous authorization seemed to emanate from the use of the term "permanent change-of-station" in paragraphs C4102(1) and C3052 of Volume 2 of the JTR's. We requested that since training assignments under 5 U.S.C. 4109 were not in fact PCS's, the term "permanent change-of-station" used therein be deleted to avoid any misunderstanding as to an employee's entitlements while on such an assignment. The removal of that phrase was accomplished in change 138, April 1, 1977.

We have reviewed these amended JTR provisions, and find them to be in accord with the law and our decisions limiting the entitlements of employees on training assignments to those enumerated in 5 U.S.C. 4109. This, of course, would not include nontemporary storage of household goods or shipment of POV's since those terms are not used in that section. The exception issued by CSC for training of a limited number of employees at overseas sites is to permit payment of travel and transportation costs authorized in 5 U.S.C. 4109 without regard to the limitation imposed by clause (a)(2)(B) of that section under which travel and transportation costs may not exceed the travel and per diem in lieu of subsistence costs authorized to be paid by clause (a)(2)(A). Authority for making such exception is contained in 5 U.S.C. 4102 as delegated to the CSC by section 401(a) of Executive Order No. 11348, April 20, 1967.

Therefore, questions a. and b. are answered in the negative and question c. is answered in the affirmative. As the foregoing relates to Mr. Pond's claim, not only may he not be reimbursed for his round-trip travel to pick up his POV, but since he was not entitled to ship it at Government expense, the costs which may have been incurred by the Government for such shipment are to be recovered from him. See 56 Comp. Gen. 85 (1976).

With regard to the additional question asked concerning an employee's entitlement to the full range of PCS allowances where his permanent duty station is overseas and where he receives PCS orders to CONUS for training and upon completion of that training

B-193197

receives PCS orders to a new overseas permanent duty station, the fact that it is the reverse of Mr. Pond's situation, in our view, is a distinction without a difference and that dependent's travel and transportation to the training location are limited by the provisions of 5 U.S.C. 4109. However, see in this connection, paragraph C4502-3 of Volume 2 of the JTR's (change 138, April 1, 1977). In this regard, it is to be noted that the entitlements of employees affected by such transfers are quite complex. In such circumstances, we do not believe that a question in this area can properly be answered in the absence of presentation of a factual situation to this Office. Since the submission indicates the existence of such a case, it is suggested that it be submitted here for resolution.


Deputy Comptroller General
of the United States