

12496

PLM-1
Mr. Heitzman

DECISION



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

FILE: B-193197

DATE: January 10, 1980

MATTER OF: Michael G. Pond - [Reimbursement for
Expense Incident to Training Assignment] -
Reconsideration

DIGEST: Agencies may not authorize reimbursement for nontemporary storage of household goods and expenses of shipping privately owned vehicle since legislative history of 5 U.S.C. § 4109 indicates that congressional intent ^{was} not to include such authority. Cf. 5 U.S.C. §§ 3371-3376, Intergovernmental Personnel Act. Payment of such items requires legislation.

DLG 00925

This decision is issued in response to a letter from the Director of the Office of Personnel Management (OPM), requesting that we reconsider Comptroller General decision B-193197, February 5, 1979, 58 Comp. Gen. 253. In that decision we held that an employee sent overseas on a 2-year training assignment pursuant to 5 U.S.C. § 4109 (1976), was not entitled to reimbursement for the nontemporary storage of his household goods and shipment of a privately owned vehicle (POV) and travel expenses related to the pick-up of his POV at the port. We so held because section 4109 of title 5 limits an employee's entitlement to travel and transportation allowances at Government expense to those enumerated in that section.

Payment of travel and transportation expenses relating to periods of training is governed by the provisions of 5 U.S.C. § 4109 (1976), which provides that:

"(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 * * *:

~~008262~~

111258

"(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 * * *."

The above language originated from section 10 of the Government Employees Training Act of 1958, Pub. L. No. 85-507, 72 Stat. 332. The OPM states that section 10 repeated almost word for word the text of the 1946 version of the Administrative Expenses Act of August 2, 1946, ch. 744, section 1, 60 Stat. 806. In this connection OPM also says that the legislative history of the Government Employees Training Act refers to the Administrative Expenses Act and shows that the Congress saw no difference between travel for training and travel for other purposes. The OPM specifically states that:

"* * * This comparability is stated on page 6 of House Report No. 1951 of the 85th Congress, 2nd Session: 'Regular travel expense appropriations are made available for travel and subsistence expenses of authorized attendance of employees at meetings concerned with the functions for which the appropriations are made. (Section 10 of the bill contains provisions to the same effect with respect to travel and subsistence expenses of an employee who receives outside training [emphasis added].)'"

It is possible, as OPM states, that one could reach the conclusion from the above language that Congress saw no difference between travel for training and other types of travel. However, the cited language merely states that regular travel expenses would be available for travel and subsistence expenses when employees attended meetings related to training. A general restriction as to the use of appropriated funds for attendance at meetings had been in effect since the Act of June 26, 1912, ch. 182, 37 Stat. 184, and remains in effect to this day. See 5 U.S.C. § 5946 (1976); 5 U.S.C. § 4110 (1976).

Thus, it appears that the cited language pointed out only the intention of Congress to remove the restrictive provisions relating to attendance at meetings with regard to the agencies and employees covered by the training act. See 38 Comp. Gen. 800, 802 (1959), and 55 id. 1332, 1336 (1976).

The OPM's next contention is that Congress erred when it revised and codified title 5 of the United States Code by Pub. L. No. 89-554, 80 Stat. 378 (1966). The OPM refers to S. Rep. No. 1380, 89th Cong., 2d Sess. 18, 20, 21 (1966), which it says summarizes the rationale for mentioning section 5724 of title 5, United States Code, alone in section 4109. The report states at page 80 that: "[t]he reference only to section 5724 is sufficient since that section contains the applicable substantive law, including the authority of the President to prescribe regulations." The OPM says that that conclusion simply is not valid since section 5724 does not contain any provision for nontemporary storage of household goods or shipment of privately owned vehicles, yet these provisions were clearly part of the first section of the Administrative Expenses Act of 1946 and were codified as sections 5726 and 5727. OPM concludes:

"* * * Hence, to refer only to section 5724 in section 4109 of title 5 constitutes a substantive change in the meaning of section 10 of the Government Employees Training Act. As the report points out on page 18:

"the purpose of this bill [i.e., P.L. 89-554] is to restate in comprehensive form, without substantive change, the statutes in effect before July 1, 1965, ... It is sometimes feared or assumed that mere changes in terminology and style will result in changes in substance or impair the precedent value of earlier judicial decisions and other interpretations. This fear might have some weight if this were the usual kind of amendatory legislation from which it can be inferred that a change in language is intended to change substance. The committee wishes to express that in a codification statute; however, the courts

uphold the contrary presumption: the statute is intended to remain substantively unchanged. [emphasis added]

"The original intent of Congress, that the full range of travel benefits be available to employees assigned to training, therefore, has been eroded by errors in codification. In 1958, section 10 of the Government Employees Training Act extended the full range of travel benefits then available to trainees. When travel benefits were expanded in 1960 and again in 1966, however, trainees found that their travel benefits were still frozen at 1958 levels."

The legislative history of the Government Employees Training Act shows that Congress was very specific about what travel expenses would be authorized for training. H.R. Rep. No. 1951 refers to section 10 of the Act and states:

"EXPENSES OF TRAINING THROUGH GOVERNMENT FACILITIES AND NON-GOVERNMENT FACILITIES

"Section 10 authorizes the head of each department, in accordance with regulations issued by the Civil Service Commission, to use funds appropriated or otherwise available to pay the salary of employees who are being trained (but not to pay them overtime, holiday, or night differential pay during periods of training). The section also authorizes the department head to cover the necessary expenses of an employee in training either by reimbursing him for those expenses or by providing money in advance in anticipation of such expenses. The necessary expenses include travel; per diem; transportation of family and household goods whenever such expenses would be less than payment of per diem; tuition; matriculation fees; library and laboratory services; purchase or rental of books, materials, and supplies; and other expenses directly related to the training of such employee. Membership fees are not allowed unless they are directly related to the cost of training."

B-193197

See U.S. Code Cong. and Ad. News, 85th Cong., 2d Sess. (1958), page 2928. The statutory language does not refer to non-temporary storage nor shipment of POVs and provides that a cost comparison be made between the listed travel expenses and the cost of the employee's per diem before the travel expenses will be authorized.

It is true, as OPM states, that the authority for nontemporary storage and transportation of motor vehicles was added by Pub. L. No. 86-707, 74 Stat. 792 (1960), sections 301 and 321. See 5 U.S.C. §§ 73b-1(e) and (f) (1964), now codified in 5 U.S.C. §§ 5726 and 5727. However, the legislative history of that Act provides a caveat as to the authorization for the transportation of POVs. S. Rep. No. 1647, printed in U.S. Code Cong. and Ad. News, 86th Cong., 2d Sess. (1960), at 3349 states:

"Assurances have been given that this authority for the transportation of privately owned motor vehicles would be strictly administered to insure that such transportation will be authorized only where it is clear that the use of an employee's motor vehicle will contribute to effectiveness in the performance of official duties, is desirable and suitable under local conditions, is in the interest of the Government, and is not solely for the personal convenience of the employee.

"The agencies concerned state that the automobile shipment allowance will be austerely administered. For example, it is not contemplated that automobiles will be shipped to any U.S. employees stationed in Europe. The reason for this is that European automobiles, which are available to U.S. employees, are usually entirely adequate. Furthermore, the larger U.S. cars are not suitable to many narrow European roads and, because of their size, they tend to have a poor psychological effect upon Europeans who see Americans driving them.

"In other countries, where domestic cars are not available, however, the authority for

B-193197

this allowance is seen as essential, so that employees who need cars as part of their jobs will have them."

Thus, with such a strong admonition from Congress as to the expected limited authority for shipment of POVs overseas, we do not believe that Congress, only 6 years later, when it recodified title 5, meant to include such authority as an authorized training expense. Congress also did not seek to add the authority for nontemporary storage and transportation of motor vehicles as an additional factor for the required cost comparison listed in 5 U.S.C. § 4109.

It is also noted that authority for granting additional relocation expenses was added by Pub. L. No. 89-516, 80 Stat. 323 (1966), now codified at 5 U.S.C. § 5724a (1976). That Act became effective on July 21, 1966; the recodification of title 5, on September 6, 1966. Thus, Congress was considering both Acts at the same time and yet did not choose to add relocation expenses to the authorized travel and transportation expenses for training.

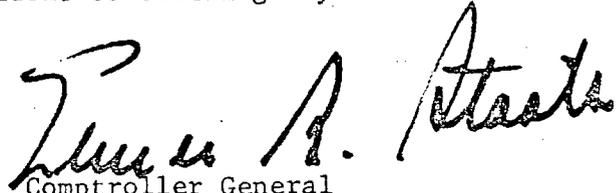
Therefore, we conclude that it was the intention of Congress to include only those travel expenses currently contained in 5 U.S.C. § 4109 (1976). See Arthur W. Lindberg, B-195461, October 15, 1979.

There is also a similar statute that limits authorized travel expenses and we believe it is analogous here. The Intergovernmental Personnel Act, Pub. L. No. 91-648 (1971), 5 U.S.C. §§ 3371-3376 (1976), provides that Government employees can be assigned to a state or local government for a period of up to 4 years. However, such employees, despite the possible length of assignment, are only entitled to those travel expenses enumerated in 5 U.S.C. § 3375. Thus, it has been necessary for this Office to deny certain miscellaneous and relocation expenses because of the specific authority stated in the statute, and enacted by Congress in 1971. James D. Broman, B-185810, November 16, 1976; William S. Harris, B-183283, October 15, 1976; 53 Comp. Gen. 81 (1973).

Although we can appreciate the problems faced by an agency in assigning its employees to a long-term training assignment

B-193197

overseas, as well as the difficulties experienced by the employees themselves, we are unable to modify our decision of February 5, 1979. We are of the opinion that the travel expenses authorized in 5 U.S.C. § 4109 reflect the intent of Congress. Therefore, we believe that payments for nontemporary storage of household goods and transportation of POVs incident to training may not be made until legislation is obtained.


Comptroller General
of the United States