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DECISION

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

FILE: B-190006

DATE: May 24, 1978

**MATTER OF: Jack J. Lefcoski - Commuting expenses and
additional per diem at place of temporary duty**

DIGEST: Civilian employee of Puget Sound Naval Shipyard (PSNS) who performed long-term temporary duty at Portsmouth Naval Shipyard not entitled to reimbursement of commuting expenses as use of privately owned vehicle not authorized or approved by agency. However, claimant entitled to computation of per diem allowance without any requirement of receipts for lodging for period prior to receipt of memorandum from Commander, PSNS, since Commander exercised discretion and dispensed with receipt requirement during period in question. Finally, disbursing officer, by virtue of statutory and regulatory responsibilities, is authorized to audit entire period of employee's temporary duty assignment.

This action is in response to an appeal by Mr. Jack J. Lefcoski, an employee of the Puget Sound Naval Shipyard, Department of the Navy, from the Settlement Certificate dated August 9, 1977, issued by our Claims Division, which disallowed reimbursement for daily commuting expenses, additional per diem, and a second telephone user fee incurred in connection with extended temporary duty at Portsmouth Naval Shipyard, Portsmouth, New Hampshire, during the period June 20, 1975, through July 31, 1976.

Pursuant to Travel Order No. T-230-039-75 dated June 11, 1975, Mr. Lefcoski was authorized to perform extended temporary duty at the Portsmouth Naval Shipyard from June 20, 1975, through July 31, 1976. The travel order provided for travel by privately owned conveyance and "mileage reimbursement and per diem limited to constructive cost of common carrier transportation and related per diem as determined in JTR (Joint Travel Regulations). Travel time limited as indicated in JTR." An amendatory travel order, same number, dated July 30, 1975, was issued by the Puget Sound Shipyard for the same period of extended temporary duty to the Portsmouth Shipyard. Travel by privately owned conveyance was deemed "more advantageous to Government." Under the "Remarks" section, it was stated, "Employee to furnish transportation at temporary duty point without reimbursement."

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Upon completion of the extended period of temporary duty, the employee and his dependents returned to their residence in Bremerton, Washington. His claim for daily commuting expenses incurred while at the temporary duty post was in the sum of \$269. He also claimed additional per diem and a second telephone user fee. Each of these claims was denied by the Department of the Navy. The agency denied the claim for daily commuting expenses between the employee's place of lodging and his temporary duty station on the basis that reimbursement of such expenses was not authorized or approved. With regard to the claim for additional per diem, the Department relied upon the authority of the disbursing officer to recompute the per diem entitlement of Mr. Lefcoski for the entire period of temporary duty and adjust prior payments upon final settlement of the claim and liquidation of the travel advance. The claimant does not appeal the determination by the agency and our Claims Division that only one telephone user fee should be allowed in determining the total cost of lodging.

The record contains two memorandums which are of significance in the resolution of this claim. The first, dated March 13, 1976, was issued by the Commander of the Puget Sound Naval Shipyard and addressed the requirement of receipts for lodging on extended temporary duty. It was stated that at that time, several Shipyard employees were performing long-term temporary duty and that most of them were drawing monthly per diem payments while at the temporary duty post. In the past, payment was based strictly upon the employee's statement as to his daily lodging costs with final settlement being made when he returned to his permanent duty station. The memorandum further stated that as the employees had been reimbursed for nonallowable items for as much as 1 year or more of temporary duty, the travelers were presented with a financial problem in attempting to repay the nonallowable items. Items, including telephone user fees, claimed as lodging expenses were required to be supported by itemized receipts. It was further stated in the memorandum, in pertinent part, as follows:

"Receipts for those employees currently on extended temporary duty will not be required for the portion of their temporary duty assignment completed prior to notification of the contents of this Notice but will be required for the portion of temporary duty after such notification."

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An earlier memorandum dated December 24, 1975, signed by D. J. LeClair, Head Nuclear Engineer, addressed the same problem of delayed reporting of expenses incurred by Shipyard employees while on extended temporary duty assignments. Pointing out the disadvantages to both the employee and the Shipyard, it was requested that employees on such assignments submit a claim for actual expenses at least bimonthly (every 2 months) rather than wait until the end of the travel period. The memorandum then stated:

"When the employee returns to Puget his final expense claim should only include the last expenses at the temporary duty location and the travel back to this Shipyard."

It was also stated that as it was then Shipyard policy to require receipts for lodging rent and associated lodging expenses for long-term temporary duty assignments, receipts should be submitted with the bimonthly claims.

In his letter of appeal, Mr. Lefcoski contends that while it is true that his orders read that he was to furnish his own transportation at his own expense at the temporary duty site, his orders were prepared in haste by a new travel clerk who was not familiar with the regulations and the part concerning paying his own commuting expenses was inadvertently overlooked. He states that to his knowledge, approximately 20 or more employees were loaned to the Portsmouth Naval Shipyard, and he was the only one who was not reimbursed for commuting expenses. The employee feels that under the regulations, he is entitled to reimbursement for the expenses incurred by him in commuting daily between his place of lodging and his temporary duty post. On his reclaim voucher, Mr. Lefcoski claims \$125 for commuting expenses for 250 days at 50 cents per day from July 7, 1975, to June 30, 1976. He also claims the sum of \$144 for 60 days, during the period January to May 1976, in commuting in his personal automobile for 16 miles each day at 15 cents per mile.

Mr. Lefcoski concludes by stating that at the time of issuance of the March 16, 1976, memorandum, it was the intention of the Commander of the Puget Sound Naval Shipyard to clear the air and start a new day one with respect to the requirement of receipts for lodging and give the comptroller a date to work with in computing the travel and per diem entitlements of employees detailed to Portsmouth. The claimant contends that the Commander clearly

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defined a cut-off date of March 16, 1976, as the date after which receipts would be required. While he feels that the disbursing officer generally has the right to audit the travel vouchers of Shipyard employees who have performed long-term temporary duty assignments, in view of instructions of the Commander of the Shipyard as contained in the March 16, 1976, memorandum, he, the disbursing officer, should have audited and required receipts only for expenditures and payments incurred and made subsequent to that date.

In regard to the entitlement of Mr. Lefcoski to reimbursement of commuting expenses incurred by him at his temporary duty post, paragraph C2154 (now C2154) of the Joint Travel Regulations (JTR), Volume 2, provides, as follows:

"Use of privately owned conveyance may be authorized or approved for travel within the limits or immediate vicinity of a temporary duty station, including mileage between place of lodging and place of business, provided it is determined that such mode of transportation is advantageous to the Government or if Government or commercial transportation is not available. Statement of the circumstances justifying mileage reimbursement between place of lodging and place of business will be included in the travel order or reimbursement voucher."

The aforementioned regulation confers discretionary authority on the agency to authorize or approve the use of a privately owned vehicle for travel in or near a temporary duty station. However, if such mode of travel is authorized or approved, the agency is required to make a determination that the use of a privately owned conveyance is advantageous to the Government or that commercial transportation is not available. Further, a statement of the circumstances justifying mileage reimbursement must be included in the travel order or reimbursement voucher. In the instant case, the use of a privately owned vehicle at the employee's temporary duty post was not authorized by either of the two travel orders that were issued to him. On the contrary, the amended travel order dated July 30, 1975, specifically states that the employee was to furnish transportation at Portsmouth, without reimbursement. In this regard, we are aware of the well-established rule set forth in numerous decisions of this Office which states that travel orders may not be amended retroactively to increase or decrease rights already vested or fixed. There are, however,

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two recognized exceptions to this general rule which allow (1) correction of errors apparent on the face of the authorization or, (2) completion of an order to show the original intent of the agency official who issued the travel order. 55 Comp. Gen. 1241 (1976). Here, it was unnecessary to state in the amendatory travel order that Mr. Lefcoski was to furnish transportation at his temporary duty station without reimbursement, as the original travel order did not authorize the use of a privately owned vehicle at Government expense. Nevertheless, the aforesaid limitation on use of a privately owned conveyance was, apparently, an effort to complete the original travel order to show the original intent of the official who issued such order.

Further, officials of the Department of the Navy did not, in either travel order, make the required determination that the use of a privately owned conveyance at the employee's temporary duty station would have been advantageous to the Government or that commercial transportation was not available. An agency's determination that an employee's use of his privately owned vehicle for travel is or is not advantageous to the Government will not generally be questioned by this Office. 56 Comp. Gen. 885 (1977); 26 Comp. Gen. 483 (1947); B-161266, March 24, 1970; and B-160449, February 8, 1967. Similarly, a statement of the circumstances justifying mileage reimbursement at place of temporary duty was not included in the travel orders. In the absence of compliance with the stated provisions of paragraph C6154 of the JTR, there is no basis upon which reimbursement of commuting expenses incurred by the claimant in the use of his privately owned automobile at Portsmouth may be allowed.

As to the allegation by Mr. Lefcoski that to his knowledge, approximately 20 or more employees were loaned to Portsmouth and that he was the only one who was not reimbursed for commuting expenses, we have been unable to verify this allegation through informal contact with Navy officials. However, should it be established that it was or is the policy and practice of Navy to pay commuting expenses incurred by its employees on temporary duty at Portsmouth and that such employees, except the claimant, were or are being reimbursed for commuting expenses, then the employee in this claim should likewise be reimbursed. Under such circumstances, we would offer no objection to such post-approval by retroactive amendment of the travel authorization and certification of the submitted vouchers covering commuting expenses for payment, if otherwise proper. See B-177665, March 9, 1973.

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We now consider the contention of Mr. Lefcoski that it was the intention of the Commander of the Puget Sound Naval Shipyard, as stated in his memorandum of March 16, 1976, not to require receipts for lodging expenses incurred prior to March 16, 1976. For clarification purposes, the effective date as to the requirement of lodging receipts as stated in the memorandum was the issue date of the notice and as to the claimant who was then on temporary duty, when he was officially notified of the contents of the notice. During the period the temporary duty in question was performed, receipts were not required for lodging. Paragraph C4552-2a, JTR, Volume 2. We would point out that effective January 1, 1977, Change 135, JTR, paragraph C4552-2a was changed to require receipts for lodging in support of claims for per diem. However, during the period of the instant claim, the requirement of receipts for lodging expenses incurred by an employee on temporary duty was at the discretion of the head of the agency or his designee. Since the Commander of the Puget Sound Naval Shipyard clearly stated in his March 16, 1976, memorandum that receipts for lodging would not be required for Shipyard employees performing long-term temporary duty assignments until official receipt of such notice, his written declaration of policy would clearly not require receipts for lodging by Mr. Lefcoski until after he received official notification of the contents of the memorandum. Hence, his claim for reimbursement of lodging expenses and his average cost of lodging are to be computed, for the purpose of determining the payable per diem rate, without any requirement of receipts therefor prior to his receipt of the March 16, 1976, memorandum.

With respect to the authority of the disbursing officer of the Puget Sound Naval Shipyard to review and audit the entire period of temporary duty performed by Mr. Lefcoski, a disbursing officer in an agency of the Department of Defense is responsible for any deficiency in his account and may review all claimed expenditures by employees of the agency prior to disbursement to the extent he determines necessary to satisfy himself as to the legality and correctness of the expenditures.

In light of the foregoing discussion and the applicable statutes and regulations governing the claim, we conclude as follows:

1. The use of his privately owned vehicle by the claimant was not authorized or approved by officials of the Puget Sound Naval Shipyard for travel at his temporary duty

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station and therefore the claimed commuting expenses are not reimbursable.

2. During the period the long-term temporary duty was performed by the employee, receipts for lodging expenses were not required by the JTR. Since the Commander, Puget Sound Naval Shipyard, in exercising his discretionary authority by written memorandum dated March 16, 1976, stated that such receipts would not be required of any employee on long-term temporary duty for that portion of temporary duty occurring prior to his receipt of said notice, the claimant's per diem allowance is for computation in accordance with the terms of the memorandum of March 16, 1976.

3. The disbursing officer herein is responsible for the legality of expenditures, for the correctness of computations, and for the facts underlying the vouchers submitted to him. Thus, he may review and audit the entire period of the claimant's temporary duty assignment to the extent he determines to be necessary to satisfy himself as to the legality and correctness of any claimed expenditures.

Accordingly, the settlement action of our Claims Division is affirmed in part and overruled in part. Action should be taken by the Department of the Navy in conformity with the aforestated conclusions.

R. F. K. 11m
Deputy Comptroller General
of the United States