



In reply refer to
B-193014 (VBG)

November 28, 1978

The Honorable John J. Cavanaugh
House of Representatives

Dear Mr. Cavanaugh:

Further reference is made to your letter of September 13, 1978, requesting a review of our Claims Division's denial of the claim of _____ for mileage reimbursement from the Department of Agriculture.

The record shows that as a meat grader for the Department of Agriculture's Agricultural Marketing Service (AMS), _____ was required to store meat grading equipment at his home overnight and transport it to and from his worksites each day. Since the time spent by meat graders transporting necessary meat grading equipment and supplies to and from work has been found to constitute "hours of work" under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, et seq. (Supp. IV, 1974), _____ contends that he is also entitled to mileage expenses for transporting the equipment for the period May 1, 1974, to June 18, 1977.

Our Claims Division found that _____ mileage entitlement is not linked to his receipt of overtime compensation under FLSA. In making its determination the Claims Division relied on our recent decision B-131810, January 3, 1978, copy enclosed, in which the identical question of meat graders' entitlement to mileage was considered. We held there that:

"The provisions of FLSA which concern hours of work do not address the question of mileage. Rather, 5 U.S.C. § 5704 and the implementing regulations are the sole basis for paying employees' mileage. Accordingly, the ruling of CSC concerning hours of work under FLSA has no application to the mileage entitlements of the AMS meat graders."

Our Claims Division discussed the Department of Agriculture's policy on the payment of mileage as it relates to _____ as follows:

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"The policy of the Agricultural Marketing Service (AMS) regarding mileage payments is found in AMS Instruction 467-6, dated December 15, 1976. The Instruction restricts mileage payments to travel to points outside the 'normal commuting area' and in those instances when travel is to more than one duty point within the 'normal commuting area' in the same day. The Instruction defines the 'normal commuting area' as the area within a circle with a 20-mile radius of the 'actual duty point' plus any area of the corporate limits of the official station. The 'actual duty point' is clarified by the Instruction as the official local office or the plant, elevator, home address, etc. where work is regularly performed. The Department of Agriculture has advised us that this policy was in effect for the entire period of your claim.

"As the file shows, you were stationed in Omaha, Nebraska, until reassigned to Oakland, Iowa, on September 15, 1974. The Department of Agriculture has informed us that while stationed in Omaha, you were required, on occasion, to provide meat grading services to more than one applicant each day and to perform limited relief assignments in locations away from your official duty station. However, we were advised that since your reassignment to Oakland, Iowa, you have routinely serviced a single establishment in Oakland and have not normally been required to perform travel on Government business. This is confirmed by your work reports--LS-58--submitted during the period of your claim. Moreover, the records of the Department of Agriculture show that you submitted mileage claims whenever you provided service to more than one establishment in a single day or traveled away from your official duty station, and that you were reimbursed at the authorized mileage rate prevailing at that time."

Since was paid mileage for all of the travel for which the Department of Agriculture provided mileage reimbursement, the other travel which did not meet the conditions for payment was disallowed by our Claims Division.

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The Claims Division's denial of claim is consistent with the above-cited decision B-131810, which held that traveling on official business does not in itself entitle an employee to mileage unless his agency exercises its discretion to authorize him mileage. See also 52 Comp. Gen. 446, 451 (1973). Since AMS has not provided for mileage reimbursement to a grader traveling to only one duty site a day within the normal commuting area, there is no legal basis upon which claim for mileage for such travel may be paid. B-131810, supra.

In regard to the issues raised in your letter, we have been informally advised that the plants using the services of AMS graders are charged a fixed mileage fee as part of the overall charge for grading services. The plants may be charged mileage even when a grader is himself not reimbursed mileage for his travel. The fact that the plant may be charged mileage for grading services does not mean that the grader is entitled to mileage for his travel. As stated above, an employee's entitlement to mileage springs from 5 U.S.C. § 5704, the implementing regulations, and the discretionary authority of an agency to grant mileage thereunder. Since travel for which he claims mileage does not qualify for mileage reimbursement under AMS regulations, there is no legal authority to pay him mileage for his travel. B-131810, supra.

We have also been notified that although there is no regulation requiring meat graders' use of a privately owned vehicle (POV), it is a condition precedent to employment that a grader have a POV at his disposal. As stated above, not all travel on official business is reimbursable under the law and regulations. The agency involved has the discretion to decide when and in what cases an employee may receive mileage for his travel on official business. Since the Department of Agriculture has not provided for mileage when an employee travels to only one duty site within a 20-mile radius in a day, cannot be granted mileage for such travel.

We note that AMS apparently allows "high mileage graders," those traveling more than 1,000 miles every 4 weeks, the option of using a Government vehicle. If Mr. Schultz were to travel over 1,000 miles every 4 weeks he would be able to take advantage of this option.

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In view of the above we have no basis to overrule the Claims
Division's denial of claim.

Sincerely yours,

Deputy


Comptroller General
of the United States

Enclosure