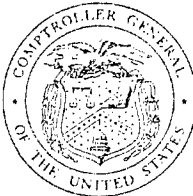


DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES

WASHINGTON, D.C. 20548

[Request For Per Diem Expenses While Performing] 10,098

FILE: B-194082

DATE: May 8, 1979

MATTER OF: Denny C. Eckenrode - Temporary
duty at ^{New} duty station

- DIGEST:
1. Employee detailed to temporary duty at location of new duty station subsequent to notification of permanent change of station may not be paid per diem while performing duty at the new duty station notwithstanding the erroneous administrative authorization since the Government cannot be bound beyond actual authority conferred upon its agents by statute and regulations.
 2. The prohibition for payment of transportation expenses of employee's spouse to seek permanent residence at a new duty station located outside the continental United States is both statutory (5 U.S.C. 5724a(a)(2) (1976)) and regulatory (FPMR 101-7 (1973) par. 2-4.1c(3)) and may not be waived.

This action is in response to a letter from Richard L. Petrocci, Authorized Certifying Officer, Federal Home Loan Bank Board, requesting our decision on the legality of waiving regulations concerning payment of per diem for 30 days' temporary duty at a new duty station or the allowable expenses for the spouse's trip to seek quarters outside the continental United States in the circumstances described.

Mr. Denny C. Eckenrode, an employee of the Federal Home Loan Bank Board was notified by letter dated November 3, 1977, of a permanent change of station (PCS) from Salt Lake City, Utah, to Honolulu, Hawaii, effective January 15, 1978. He was authorized reimbursement of certain travel expenses in the notification of November 3, 1977, including transportation, per diem and allowable expenses for his spouse for a round trip to Hawaii to seek residence quarters at the new duty station. Relying on these orders the spouse made a round trip to Honolulu to select a house. Subsequent to her return it was discovered that the travel authorization for a house hunting trip by the spouse was erroneous since it was to a location outside the continental (conterminous) United States. Mr. Eckenrode was immediately notified of the error. In a letter dated December 16,

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1977, the Bank Board sought to compensate him for the error by changing his effective reporting date to February 12, 1978, and subsequently issuing new travel orders authorizing him to travel to Honolulu, Hawaii, on temporary duty (TDY) for the period January 14, 1978 (the original reporting date) to February 12, 1978, thus authorizing him to be paid per diem so as to recoupe the expenses of his spouse's erroneously authorized trip.

The member departed Salt Lake City, Utah, with his spouse on January 11, 1978, and he arrived in Honolulu on January 14, 1978. There is no indication that he returned to his old duty station after departing there on January 11, 1978. He submitted claims for per diem and miscellaneous travel expenses while in a TDY status from January 12 through February 11, 1978. His claim for per diem in the amount of \$1,420 was denied by the Controller of the Federal Home Loan Bank Board in a letter dated August 31, 1978. While the file does not reflect the nature of Mr. Eckenrode's duties either in the TDY status or his permanent assignment at the new station, it is apparent that both the TDY and his new duty station were in Honolulu.

No question is raised concerning the determination that the authorization for payment of expenses of transportation of employee's spouse to seek permanent residence quarters at a new station located outside the continental (conterminous) United States was erroneous. It should be pointed out, however, that such authorization is not only precluded by paragraph 2-4.1c of the Federal Travel Regulations (FPMR 101-7) (1973), but also by 5 U.S.C. 5724a(a)(2) (1976). Thus, the prohibition is both statutory and regulatory.

Payment of travel per diem is authorized only to employees on official travel away from their posts of duty (permanent duty stations). 5 U.S.C. 5702(a) (1976). See also, paragraph 1-7.6a of the Federal Travel Regulations (FPMR 101-7, May 1973).

The location of an employee's permanent duty station for travel and per diem purposes has consistently been held by this Office to be the place at which the employee performs the major portion of his duties and where he is therefore expected to spend the greater part of his time. 32 Comp. Gen. 87 (1952). Administrative officials who have the authority to designate posts of duty for Government employees do not have the discretion to designate a place other than the location where he actually performs the greater

part of his duties, for the purpose of giving the employee a greater travel per diem or subsistence allowance. Thus, in determining the employee's actual post of duty, each case is to be decided on its own facts and circumstances, including such factors as the nature of the assignment, the required duties, and the locale in which they are to be performed. 49 Comp. Gen. 145 (1969); 25 id. 136 (1945); 10 id. 469 (1931); B-188093, October 18, 1977.

The general rule is that a transfer is effective on the date the individual arrives at the new station. Based on the principles discussed above we have held that when an employee is transferred to a place at which he is already on duty, the transfer is effective on the date he receives notice of the transfer and he may not thereafter be paid per diem while at that location. 23 Comp. Gen. 342 (1943). This rule is based on the assumption that the employee will be expected to spend the greater part of his time and perform the greater portion of his duties at the new permanent duty station after receipt of the notice of transfer.

One instance in which we have recognized that notice of transfer to the location at which an employee is assigned to TDY does not preclude payment to him of per diem while at that location is the case in which an employee returns to his prior duty station to perform substantial duty before the scheduled transfer date. Thus, in 51 Comp. Gen. 10, supra, we recognized that an employee who was notified of transfer to Boston while on duty there could be paid per diem incident to that temporary assignment where he was expected to return to Chicago, his permanent station, for 2 to 3 weeks before the date on which he was to report for permanent duty to Boston. In that case we held that the employee's per diem entitlement did not terminate until he had finished his assignment in Chicago and returned to Boston. B-176857, December 22, 1972.

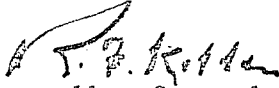
In the present case, Mr. Eckenrode was notified by letter dated November 3, 1977, of his transfer to Honolulu, 2-1/2 months before his reporting date of January 15, 1978. The amendment to the orders dated December 16, 1977, changing his reporting date to February 12, 1978, and his assignment to TDY in Honolulu, the same location as his new duty station was admittedly an attempt to compensate him for a previous administrative error by increasing his subsistence allowance.

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The duty assignment performed in Honolulu in the TDY status may not have been a part of his regular duties but nevertheless, his duties were performed at or in the proximity of the new duty station. Therefore, he is not entitled to per diem in Honolulu at any time subsequent to notification of his transfer.

The point is made that since an administrative error was made by the Government through no fault of the employee which caused the employee to incur certain expenses, the Government should bear the burden of those expenses. Further, that since the TDY at the location of the new duty station was authorized by competent authority, though erroneous, the per diem claim should be allowed. It is a well-settled rule of law, however, that the Government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulations, and this is so even though the agent may have been unaware of the limitations on his authority. See German Bank v. United States, 148 U.S. 573, 579 (1893); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); 53 Comp. Gen. 11, 15; B-177565, February 9, 1973.

Accordingly, since both the authorization for travel to seek residence quarters and the authorization of TDY at the location of the new duty station were erroneous, no payment may be predicated on either authorization. Further, this Office has no authority to waive the provisions of regulations and statutes in making payments on claims.


Deputy Comptroller General
of the United States