

*Wernsing*

**DECISION**



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

*[Request for Reconsideration] 15879*

FILE: B-199612

DATE: January 15, 1981

MATTER OF: Mr. Neil E. Wernsing - Erroneous per diem payments

- DIGEST:
1. Veterans Administration employee received erroneous per diem payments. Cancellation of indebtedness may not be granted since rule is well established that per diem expenses are not allowed at place where employee is on temporary duty after employee receives notice that same location will become his permanent duty station. B-199612, September 24, 1980, sustained.
  2. Veterans Administration employee who received erroneous per diem payments may not be relieved from liability for repayment on the basis that payments were made by persons responsible for administering travel funds. The rule is well established that the Government is not bound by the erroneous authorization of its officers or employees and any payments so made are recoverable. Claim is not appropriate for reporting under the Meritorious Claims Act, 31 U.S.C. 236, since it does not contain equities of an unusual nature which are unlikely to reoccur.

This action is in response to a letter dated October 17, 1980, from Mr. Neil E. Wernsing, an employee of the Veterans Administration (VA), requesting reconsideration of decision B-199612, September 24, 1980, which denied his claim for per diem for temporary duty performed at a location which became his permanent duty station.

The record shows that Mr. Wernsing was stationed in Los Angeles, California. In January 1978 it was decided that a VA investigative office was to be opened in Denver, Colorado, and that Mr. Wernsing would travel to Denver on temporary duty for the purpose of establishing that office. The record also reflects that Mr. Wernsing was informed before he began his temporary duty assignment that he would be transferred from Los Angeles to Denver once that office became operational.

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Except for a brief period in April and May of 1978 when he returned to Los Angeles to assist his family move to the Denver area on May 2, 1978, virtually all of Mr. Wernsing's work was centered in the Denver area and associated with the establishment of the investigative office there. On the day after he initially arrived in Denver, he executed an agreement requiring him to remain in the Government service for 1 year. On March 1, 1978, he was issued a travel authorization assigning him to permanent duty in Denver effective on or about April 6, 1978.

Mr. Wernsing submitted three travel vouchers claiming per diem expenses. Following initial approval and payment, it was determined by the VA that he had been improperly paid and was liable for \$2,030 for 58 days of per diem. Based on the determination that he was entitled to temporary quarters subsistence expenses of \$490.02 incident to his and his family's relocation to the Denver area, Mr. Wernsing's indebtedness was later reduced from \$2,030 to \$1,539.98.

Mr. Wernsing considers it unjust that he be held financially responsible to repay the amount received by him for per diem expenses, when the payments were authorized by persons responsible for the payment of travel funds. Because he believes it is inequitable for the Government to require him to bear the temporary duty type costs he incurred while in Denver, he requests that the matter be submitted to Congress as a meritorious claim under the provisions of 31 U.S.C. 236.

An employee's entitlement to per diem incident to temporary duty travel away from his permanent duty station is authorized by 5 U.S.C. 5702 and the implementing regulations contained at chapter 1, Part 7, of the Federal Travel Regulations (FTR) (FPMR 101-7). Paragraph 1-7.6a specifically provides that "Per diem \* \* \* may not be allowed an employee \* \* \* at his permanent duty station \* \* \*."

It is a well-established rule that an employee on temporary duty is not entitled to per diem at his temporary duty station from the date he received notice that such station is to become his permanent station. 22 Comp. Gen. 1 (1942); 23 Comp. Gen. 342 (1943); 24 Comp. Gen. 593 (1945); 31 Comp. Gen. 439 (1952); 46 Comp. Gen. 595 (1967); and B-188093, October 18, 1977.

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Mr. Wernsing was aware of the fact that he was going to be transferred to Denver even before he left Los Angeles. Shortly after his arrival in Denver and incident to that permanent assignment, he executed an agreement to remain in Government service for 1 year. For these reasons and because he was issued permanent change of station orders on March 1, 1978, which identified Denver as his new permanent duty station, we find no legal basis for concluding that he was entitled to per diem for any of the period he was working in Denver.

With regard to his contention that the erroneous per diem payments made to him should not have to be repaid since they were approved and paid by responsible officials, such argument is not supportable in law. It is a well-settled rule that the Government cannot be bound beyond the authority conferred upon its agents and employees, either by statute or by regulations. See Matter of Reza Fassihi, 54 Comp. Gen. 747 (1975), and cases cited. Nor is the Government estopped from repudiating authorized actions taken by one of its officials. See Matter of Joseph Pradarits, 56 Comp. Gen. 131 (1976). Further, any payments made on the basis of an erroneous authorization are recoverable. See Matter of T. N. Beard, B-187173, October 4, 1976.

Accordingly, decision B-199612, September 24, 1980, rendered in Mr. Wernsing's case, is sustained.

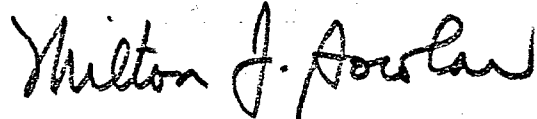
As to Mr. Wernsing's request that this matter be referred to Congress under the provisions of the Meritorious Claims Act of 1928, 31 U.S.C. 236, that act provides that when a claim against the United States is filed in the General Accounting Office which may not be lawfully adjusted by use of an appropriation, but which claim in our judgment contains such elements of legal liability or equity as to be deserving of the consideration of Congress, this Office shall submit it to the Congress with our recommendation.

The cases we have reported for the consideration of Congress, generally, have involved circumstances of an unusual nature which are unlikely to constitute a recurring problem. To report to Congress a particular case when similar equities exist or are likely to arise with respect to others, would constitute preferential treatment.

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Based on the record before us, we do not consider Mr. Wernsing's claim to have elements of equity of an unusual nature which are unlikely to reoccur. While we do appreciate the unfortunate circumstances which gave rise to this case, there have been a number of cases in which monies erroneously paid to employees for per diem have been recovered.

Thus, we do not believe it would be appropriate for this Office to submit a recommendation to the Congress for relief of Mr. Wernsing under the Meritorious Claims Act.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General  
of the United States