

DECISION



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

FILE: B-205440

DATE: May 25, 1982

MATTER OF: Walter A. Gilmore

DIGEST: Employee stationed in Washington, D.C., who performed intermittent temporary duty in Hines, Illinois, after being notified that he would be transferred to Hines effective September 9, 1978, nonetheless may be paid per diem when at Hines through December 30, 1978, since he was issued temporary duty orders to Hines during this period and until reporting to Hines on that date spent much of his time on assignment in Washington, D.C.

This action is in response to Mr. Walter A. Gilmore's appeal from the settlement of our Claims Group in Z-2823592, September 8, 1981, which disallowed his claim for per diem at Hines, Illinois, for the period subsequent to September 10, 1978, on the basis that Hines became his permanent duty station when he reported for duty on that date. For the reasons set forth herein we find that Mr. Gilmore reported for duty at his new duty station on December 30, 1978, and the Claims Group's action denying his claim for per diem at Hines prior to that time is reversed.

Mr. Gilmore was notified on August 29, 1978, that he was to be transferred to Hines, Illinois, effective September 9, 1978. Between August 29 and December 30, 1978, he traveled to Hines under temporary duty travel orders on four separate occasions. In addition, he was issued permanent change-of-station travel orders with reporting dates of October 22, 1978, and January 2, 1979. Thus, the confusion concerning the effective date of Mr. Gilmore's transfer and per diem entitlement arose as a result of the conflicting temporary duty and permanent change-of-station travel orders.

Mr. Gilmore was paid per diem by his agency for the time he spent in Hines between September 9 and December 30, 1978. However, the agency now seeks to recover those funds on the basis that paragraph 1-7.6 of the Federal Travel Regulations (FTR) (FPMR 101-7) precludes payment of per diem to an employee while at

his permanent duty station. Thus, whether Mr. Gilmore was erroneously paid per diem for the time he was in Hines between August 29 and December 30, 1978, depends on the effective date of his transfer. The agency claims that his transfer was effective September 10, 1978, while Mr. Gilmore claims that his transfer was not effective until the January 2, 1979 date reflected by his permanent change-of-station orders as amended January 22, 1979.

Although Mr. Gilmore's transfer to Hines had earlier been documented by a request for personnel action and though he had been advised that he would be transferred to Hines effective September 9, 1978, in fact he was not issued permanent change-of-station orders in connection with his travel to Hines on September 9. On September 8, 1978, a VA Form 5-4652-3 was executed detailing him back to Washington, D.C., through October 2, 1978, and at the same time he was issued travel orders directing him to perform temporary duty at Hines for a period of 20 days beginning September 9, 1978. On September 18, 1978, while still in Hines, he was issued permanent change-of-station orders directing his transfer to Hines effective October 22, 1978. The effect of those orders is unclear since on October 1, 1978, Mr. Gilmore's detail to Washington, D.C., was extended to December 31, 1978, and thereafter he was issued three different sets of orders directing him to travel to and perform temporary duty at Hines. Mr. Gilmore was in Hines pursuant to these and the earlier temporary duty order for a little more than half of the workdays between September 9 and December 31, 1978. He was in Washington, D.C., from September 21 to 24, from October 9 to November 8, from November 22 to 24, and from December 21 to 30, 1978.

The general rule is that the effective date of an employee's transfer to a new duty station is the date on which he actually arrives at the new station. If, however, the employee is already at the new duty station on a temporary duty assignment, the rule is that the effective date of the transfer is the day the

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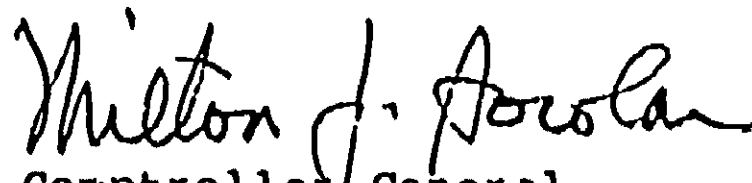
employee receives notice thereof, 23 Comp. Gen. 342 (1943). Neither of the above-stated rules has been applied when an employee performs a period or periods of temporary duty at his new official station between the time he receives the transfer orders and the stated effective date of those orders if such period or periods of temporary duty are terminated by a return to the old official station on official business. In such situations we have held that the effective date of the transfer for travel and per diem purposes is the date the employee returned to his new duty station to stay. 51 Comp. Gen. 10 (1971); B-139223, June 15, 1959; B-135690, May 8, 1958.

In Mr. Gilmore's case, the determination as to the effective date of his transfer is complicated by a record of inconsistent travel orders. Although the permanent change-of-station orders issued on September 18, 1978, were not cancelled, Mr. Gilmore did not report to Hines on October 22 as contemplated. Further, having returned to and remained in Washington, D.C., for the 1-month period from October 7 to November 8, 1978, Mr. Gilmore thereafter returned to Hines under two different temporary duty travel orders that provided for his return to Washington, D.C. During this period personnel documents showed he was assigned to Hines but on detail in Washington. His permanent change-of-station orders were amended on January 22, 1979, to change the date for reporting to his new duty station from October 22, 1978, to January 2, 1979. It is well established that legal rights and liabilities vest as and when travel is performed under the travel orders and that such orders may not be retroactively modified so as to increase or decrease rights and benefits that have become fixed under the applicable statutes and regulations. See 54 Comp. Gen. 638 (1975). Under that rule the amendment of January 22 could not be effective to change vested rights. However in this case, it appears that Mr. Gilmore's rights under the various orders issued were not settled at any time until his travel to Hines on December 30. Prior to that date conflicting temporary duty and permanent change-of-station travel orders existed and until then

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although Mr. Gilmore knew that Hines was to be his permanent duty station, he knew that he would still be required to work in Washington much of the time. The records furnished show that he treated Hines as a temporary duty point, not obtaining permanent lodgings during the period.

In view of the confusion regarding Mr. Gilmore's assignment, since he did have temporary duty travel orders for periods he spent in Hines until December 30, 1978, and since he did in fact spend a substantial part of his time in his old duty station, we do not find that Hines became his permanent station until December 30, 1978. Accordingly, payment of travel per diem to him while he was at Hines was proper until that date. Thus, the amounts paid Mr. Gilmore should not be collected and any amount already recouped should be returned to him.

for 
Comptroller General
of the United States