



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Gary C. Rhyne - Travel Expenses Incident to
Removal Proceeding

File: B-233387

Date: September 7, 1989

DIGEST

A school principal employed by Department of Defense Dependents Schools, Germany Region, claims travel allowances for expenses he incurred incident to travel he performed when he received notice of the agency's proposal to remove him. The notice provided for his right to make an oral response pursuant to agency regulation. The employee's duty station was Erlangen, Germany, and the agency designated Wiesbaden, Germany, as the location for the oral presentation. The oral response, as part of the proposed adverse action process constitutes official business for which travel expenses are reimbursable.

DECISION

This action is in response to a letter dated October 7, 1988, from Mr. Gary C. Rhyne, requesting reconsideration of our Claims Group's settlement Z-2865861, September 27, 1988. That settlement sustained the Department of Defense's action disallowing Mr. Rhyne's claim for travel expenses incurred on October 26, 1987, in connection with travel from Erlangen, Germany, to Wiesbaden, Germany, to make an oral response to a proposed notice of removal. The opportunity to make an oral response is provided for by agency regulation and the location was designated by the agency. For the reasons which follow, Mr. Rhyne is entitled to travel expenses incident to this trip.

BACKGROUND

The record shows that Mr. Rhyne was employed as principal of the Erlangen Elementary School by the Department of Defense Dependent Schools, Germany Region. On October 2, 1987, he was issued a Notice of Proposed Removal. The notice provided for the opportunity to respond to the proposed adverse action both orally and in writing, based

upon section E.2.f. of DSG Regulation 5752.2, March 8, 1984, entitled "Department of Defense Dependents Schools, Germany Region, Adverse Actions."

The Dependents Schools designated Dr. Robert E. Lundgren, Deputy Director, DODDS - Germany Region, Wiesbaden, Germany, as the official to receive Mr. Rhyne's response to the proposed action. Apparently Mr. Rhyne chose to respond both in writing and orally. To make his oral response he traveled by private automobile on October 26, 1987, from Erlangen to Wiesbaden, and return, at his personal expense, a distance each way he claims of about 200 miles. Upon return, Mr. Rhyne submitted a voucher for travel expense reimbursement which the agency has refused to pay.

The Director, Germany Region, Dependents Schools, reported to our Office that Mr. Rhyne was not directed to appear in Weisbaden, but only given the opportunity to do so, and that his travel was a voluntary election. He further states that the agency neither issued travel orders nor was the issuance of such orders authorized. The Director further notes that the claimant was a nonpreference eligible in the excepted service, and that his entitlement to make an oral reply was only as provided by agency regulations cited above.

The Director summarized his reasons for rejecting Mr. Rhyne's request for reimbursement for travel expenses as follows. Applicable regulations do not include a specific reference to payment of travel expenses for this purpose, but provide for the payment of travel expenses of "official travel" only, defined as only travel which is in connection with business of the government. The Director maintains that reimbursement is within the agency's discretion, based upon its consideration of the best interest of the employee and the government, and he emphasizes that Mr. Rhyne was not directed to appear before the deciding official, but only given the opportunity to do so.

OPINION

The provisions of law regarding the personnel system for teachers in the overseas schools are set forth at 20 U.S.C. §§ 901-907 (1982),^{1/} and include authority under 20 U.S.C. § 902 for the Secretary of Defense to issue implementing regulations.

^{1/} Defense Department Overseas Pay and Personnel Practices Act, Public Law 86-91, July 17, 1959, 73 Stat. 213, as amended.

The agency's administrative report on Mr. Rhyne's case indicates that Mr. Rhyne's entitlement to make an oral reply was only as provided by agency regulations which are equivalent to those in 5 C.F.R. Part 752, implementing 5 U.S.C. Chapter 75, concerning adverse actions. The agency specifically refers to 5 C.F.R. § 752.404(c) which requires, in cases of removal actions, that the agency grant the employee a reasonable amount of official time to respond and that it designate an official to hear the employee's oral response.^{2/} As is indicated previously, the agency states that neither its regulation granting the right to an oral response nor 5 C.F.R. § 752.404(c), after which its regulation is patterned, provide for payment of travel expenses for the employee to present the response. The agency does not consider such travel as being on official business for which travel allowances are payable.

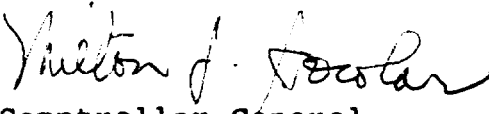
In similar circumstances, however, we have long considered such travel as being official business and reimbursable as such. For example, on this basis we have allowed reimbursement of travel expenses incurred by employees incident to their agency's hearing of their legitimate grievances as authorized by Executive Order. 21 Comp. Gen. 382 (1941). Similarly, we held that where a statute conferred upon an employee a right to an oral hearing on his appeal concerning his efficiency rating, necessary travel required to attend such a hearing must be considered official business and the expenses so incurred are reimbursable to the extent authorized by travel regulations. 31 Comp. Gen. 346 (1952). See also, 33 Comp. Gen. 582 (1954); and Lawrence D. Morderosian, B-156482, June 14, 1977.

We recognize that in Mr. Rhyne's case his travel was performed to make an oral response to a proposed adverse action, and not to attend a formal administrative hearing as in the above-cited decisions. Nevertheless, we consider his travel to be official business because it was necessary for him to travel to effectuate his right to make an oral reply to the designated agency official at the critical time before a final decision to take action had been made. The location selected for the hearing was determined by, and in the complete control of, the agency. We believe it would be unreasonable to have the right to make an oral response made dependent on the economic capability of the employee to sponsor his own travel to a location chosen by the agency. Accordingly, Mr. Rhyne's travel was on official business and

^{2/} This provision in effect restates the requirements of 5 U.S.C. § 7513(b).

the necessary and allowable travel expenses he incurred are reimbursable.

Therefore, our Claims Group's disallowance of the claim is overruled and payment on Mr. Rhyne's travel voucher should be made in accordance with applicable travel regulations. The voucher and the request for official travel submitted to us are returned to the agency for action.


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