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Peter Iannicelli
Civ. Pers.

DECISION



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

FILE: B-187184

DATE: March 2, 1977

MATTER OF: Robert S. Mulhern - Claim for severance pay,
per diem, and mileage

DIGEST:

1. Employee of Small Business Administration claims per diem and mileage incurred incident to permanent change of duty station. Where employee refused to sign agreement to remain in Government service for 12 months following transfer and resigned from position with Government before expiration of 12-month period following transfer, reimbursement of travel and transportation expenses is not proper. 5 U.S.C. § 5724(i) (1970); FTR para. 2-1.5a(1)(a) (May 1973).
2. Payment of mileage for use of privately owned vehicle is not proper where use of privately owned vehicle has not been authorized or approved by employing agency. FTR para. 1-4.1a (May 1973).
3. There is no requirement of law that per diem allowance be authorized upon assignment to temporary duty station. Determination as to allowance of per diem is within discretionary authority of employing agency. B-171969, November 14, 1973.
4. In computing Small Business Administration employee's length of service for purposes of severance pay, military service which did not interrupt employee's creditable civilian service should not be counted. 5 U.S.C. § 5595(c) (1970); 5 C.F.R. 550.704(b)(1) (1976).

This action is in response to the request of Mr. Robert S. Mulhern, a former employee of the Small Business Administration (SBA), for reconsideration of the settlement of our Transportation and Claims Division (TCD), now Claims Division, on May 24, 1976,

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disallowing his claim for reimbursement of travel expenses incurred incident to his permanent change of station from the SBA Branch Office in Milwaukee, Wisconsin, to the SBA Branch Office in Springfield, Illinois, and authorizing payment of \$2,325.51 in severance pay pursuant to Mr. Mulhern's refusal to transfer and subsequent resignation from the SBA.

The record shows that claimant was employed as a Loan Officer in the Milwaukee Branch Office of the SBA. By letter dated March 25, 1974, the Regional Director advised Mr. Mulhern that he was being reassigned in the position of Loan Specialist in the Springfield Branch Office effective April 2, 1974, for the benefit of the SBA. On April 2, 1974, Mr. Mulhern orally advised the Acting Branch Manager of the Milwaukee Branch Office that he was contesting the transfer on the ground that it was arbitrary and punitive in nature. By letter dated April 19, 1974, the Regional Director responded, that after reexamining the basis for the transfer, it was his judgment that the transfer was essential to the overall efficiency of SBA Region V. On April 26, 1974, the Regional Director sent claimant a telegram reconfirming that the transfer was to be effected April 28, 1974, and indicating that since Mr. Mulhern had not yet completed SBA Form 749 (Employment Agreement) and SBA Form 785 (Transfer of Official Station Approval Request and Travel Authorization) it was assumed that Mr. Mulhern did not intend to seek reimbursement at that time for relocation expenses.

Mr. Mulhern reported to the Springfield Branch Office as ordered and on May 10, 1974, filed a formal grievance with the SBA seeking, among other things, reassignment to the Milwaukee Branch Office and full reimbursement of all expenses incurred incident to the transfer to the Springfield Branch Office. On May 30, 1974, the SBA declined to take action on Mr. Mulhern's grievance. Claimant thereupon resigned effective June 14, 1974.

By letter of November 14, 1975, Mr. Mulhern filed a claim with TCD for severance pay and for per diem and travel expenses incurred during his tenure with the Springfield Branch Office of the SBA. The unspecified amount he had claimed for per diem and other travel expenses was disallowed by the TCD settlement of May 24, 1976, because he had never signed an agreement to remain in the service of the Government for 12 months following the effective date of his transfer as required by paragraph 2-1.5 of the Federal Travel Regulations (FPMR 101-7, May 1973). TCD allowed

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the claim for severance pay and computed the gross amount owed to be \$2,325.51, based upon information supplied by the SBA regarding the length of Mr. Mulhern's service for severance pay purposes.

Mr. Mulhern contends that his claim for per diem and other travel expenses was improperly disallowed because he accepted the transfer to the Springfield Branch Office only as a temporary transfer while he contested the permanent transfer through the formal grievance filed with the SBA. He readily acknowledges that he never signed a 12-month service agreement since he never accepted a permanent transfer to the Springfield Branch Office and never claimed reimbursement for relocation expenses incurred in connection with that transfer. His claim, therefore, is for mileage and per diem allowances for the 47-day period during which he was assigned to and reported for duty at the Springfield Branch Office (the period from the effective date of the transfer until the effective date of his resignation).

It is our opinion that Mr. Mulhern is not entitled to per diem and mileage expenses either on the basis of having been permanently or temporarily assigned to the Springfield Branch Office.

The TCD settlement was correct because reimbursement of travel allowances incurred in connection with a permanent change of duty station may only be made after the employee agrees in writing to remain in Government service for 12 months following the transfer. 5 U.S.C. § 5724(i) (1970); FTR para. 2-1.5a(1)(a) (May 1973). Since the claimant steadfastly refused to sign any 12-month service agreement and, in fact, did not remain in Government service for 12 months after the transfer, reimbursement of travel and transportation expenses on the basis of a permanent transfer would be improper. See B-178595, June 27, 1973.

Mr. Mulhern contends that because he refused to accept the permanent transfer and only accepted the assignment as a temporary duty assignment, he is entitled to per diem and mileage for the period of time he was actually assigned to the Springfield Branch Office. We do not agree.

The record shows that claimant was transferred permanently, and there is no indication that the travel orders were modified

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so as to authorize a temporary duty assignment or payment of mileage and per diem. Moreover, we have been informally advised by SBA officials that the assignment was never considered to be a temporary assignment and that mileage and per diem were never authorized.

With regard to the claim for mileage, payment of mileage for the use of privately owned vehicles while on Government business is authorized in section 5704, title 5, United States Code (1970). Federal Travel Regulations issued pursuant thereto provide that mileage may be paid for the use of a privately owned vehicle only when such use is authorized or approved by the employing agency. FTR para. 1-4.1a (May 1973).

With regard to the claim for per diem, even if we were to assume that the SBA considered this action to be a temporary assignment, there is no requirement of law that such allowance be authorized upon assignment to a temporary duty station, and determinations as to allowance of per diem are within the discretionary authority of the agency concerned. B-182728, February 18, 1975; B-171969, November 14, 1973; B-168869, March 10, 1970.

Mr. Mulhern has also requested reconsideration of that portion of the TCD settlement which authorized payment to him of severance pay in the gross amount of \$2,325.51. The SBA, however, sent him a letter dated July 9, 1976, which recomputed the severance pay and arrived at a gross amount of \$1,585.58. Mr. Mulhern desires to know the correct amount of severance pay owed to him.

The portion of the TCD settlement of May 24, 1976, computing claimant's severance pay was based upon information supplied to TCD by the SBA. As the July 9, 1976, letter explained to Mr. Mulhern, the SBA had erroneously included Mr. Mulhern's military service in computing his severance pay. Based upon this erroneous information, TCD also included Mr. Mulhern's military service in the computation of his severance pay.

The authority for granting severance pay is found in 5 U.S.C. § 5595 (1970). Section 5595(c) states in pertinent parts:

"(c) Severance pay consists of—

"(1) a basic severance allowance computed on the basis of 1 week's basic pay at the rate received immediately before separation

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for each year of civilian service up to and including 10 years for which severance pay has not been received under this or any other authority and 2 weeks' basic pay at that rate for each year of civilian service beyond 10 years for which severance pay has not been received under this or any other authority; and

"(2) an age adjustment allowance computed on the basis of 10 percent of the total basic severance allowance for each year by which the age of the recipient exceeds 40 years at the time of separation." (Underscoring supplied.)

We point out that the severance pay statute refers only to civilian service being creditable for severance pay purposes. However, the regulation of the Civil Service Commission issued in accordance with the statute does indicate that military service is creditable but only if civilian service is interrupted by such military service. See 5 C.F.R. § 550.704(b)(1)(1976).

Mr. Mulhern's severance pay had been calculated by including 1 year, 9 months, and 24 days of military service, and we have been informally advised by SBA officials that such service did not interrupt his creditable civilian service. Therefore, the gross severance pay figure of \$2,325.51 computed in the TCD settlement was erroneous because military service should not have been included.

The Small Business Administration has advised our Office that Mr. Mulhern has been paid the correct amount of severance pay due him.


Acting Comptroller General
of the United States