



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

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B-179430

December 18, 1973

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Mr. B. Crippen
Finance and Accounting Officer
Through Office of the Comptroller
of the Army
Department of the Army

Dear Mr. Crippen:

This refers further to your letter of May 8, 1973, with enclosures, reference AD3A-CFA, forwarded here by the Office of the Comptroller of the Army on August 6, 1973, reference DACA-CSS-FF, requesting an advance decision whether the enclosed voucher in the amount of \$103.61, representing overtime compensation to Mr. Richard L. Truax for travel performed for 10 hours and 15 minutes on Saturday, March 24, and 1 hour on Sunday, March 25, 1973, incident to reporting to the office of the United States Attorney at Camden, New Jersey.

You say that Mr. Truax, an employee of the Sacramento Army Depot, Sacramento, California, was directed by the Department of the Army to report to the office of the United States Attorney, Camden, New Jersey, at 10 a.m. Sunday, March 25, 1973. The purpose of the travel was for Mr. Truax to testify as a witness in a Government case and arrival in Camden on March 25, 1973, was necessary for briefing for the trial scheduled for March 26, 1973. Departure from Sacramento at 6:30 a.m. March 24, 1973, was necessary to insure arrival in Camden by 10 a.m. on March 25, 1973. Mr. Truax maintains that since the date for the start of the trial, March 26, 1973, was established by the Federal Court rather than the Department of the Army, that the necessity for travel on Saturday and Sunday was administratively uncontrollable by the Department of the Army. Payment of overtime compensation to Mr. Truax was administratively denied on the basis that the travel was directed by the Department of the Army and not the court and, therefore, it was administratively controllable. You say that the Department of the Army could have negotiated with the court to arrange for the later appearance of Mr. Truax as a witness which would not have required travel on a nonduty day.

The following questions are submitted for a decision:

"a. Is the voucher proper for payment in view of the circumstances set forth above.

[Request for Advance Decision ^{on} ~~for~~ Overtime Pay]

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"b. If the employee had been served with a subpoena by the court would the event then be properly considered as administratively uncontrollable."

The authority for the payment of time in a travel status away from the official duty station of an employee is provided for in 5 U.S.C. 5542(b)(2)(P) and provides as follows:

"(b) For the purpose of this subchapter—

* * * * *

"(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless—

* * * * *

"(B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively."

The conditions under which travel is not administratively controllable are set forth in Federal Personnel Manual Supplement 990-2, Book 559, subchapter 51-3b(2)(c)(iv), which provides in pertinent part as follows:

"—Travel which results from an event which cannot be scheduled or controlled administratively is also a new condition under which travel is considered hours of work. The phrase 'could not be scheduled or controlled administratively' refers to the ability of an executive agency (as defined in section 105 of title 5, United States Code) and the government of the District of Columbia to control the event which necessitates an employee's travel. The control is assumed to be the agency's whether the agency has sole control, or the control is achieved through a group of agencies acting in concert, such as a training program or conference sponsored by a group of Federal agencies, or sponsored

by one in the interest of all, or through several agencies participating in an activity of mutual concern, such as an agency hearing on an aircraft accident.

"—For example, training courses throughout the country generally are scheduled to start at the beginning of the workweek, and usually start at 9 a.m. daily. Attendance at training centers located away from an employee's duty station, therefore, usually will require the employee to travel outside his normal work hours. Since the agency which is conducting the training course can schedule the hours of training, the training course is an event which can be scheduled or controlled administratively; and employees who attend the course will not be paid for time in travel status regardless of whether employed by the agency conducting the training course or another agency.

"—On the other hand, travel will be considered hours of work when it results from unforeseen circumstances (e.g., a breakdown of equipment) or from an event which is scheduled or controlled by someone or some organization outside of Government. (See Comptroller General decision B-163654, April 19, 1968.)"

In our decision, B-163654, April 19, 1968, we interpreted the language of section 5542(b)(2)(B)(iv) and concluded that there must have existed an immediate official necessity occasioned by the unscheduled and administratively uncontrollable event for travel by the employee during hours outside his scheduled workweek before such travel time constitutes hours of employment within the meaning of such provision. See also 49 Comp. Gen. 209 (1969). Further, there must not be such notice of the event as will permit scheduling of the travel. 50 Comp. Gen. 674 (1971).

In the present case there is no indication that an immediate official necessity for Mr. Truax's travel existed. Moreover, the record shows that Mr. Truax was directed by Department of the Army message dated March 21, 1973, to report to the office of the United States Attorney, Camden, New Jersey, at 10 a.m. March 25, 1973. The Department of the Army could have scheduled his travel on March 23 during regular duty

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hours. Under such circumstances the scheduling of the travel was within administrative control of the Government. Accordingly, the travel by the employee during hours outside his scheduled workweek did not constitute hours of employment within the meaning of the exception contained in 5 U.S.C. 5542(b)(2)(B)(iv) so as to entitle him to overtime. Question "a" is answered in the negative.

Concerning question "b," section 3 of the act of December 29, 1941, 55 Stat. 876, 31 U.S.C. 582d, provides that authorized certifying officers "shall have the right to apply for and obtain a decision by the Comptroller General on any question involved in a payment on any vouchers presented to them for certification." Accordingly, our Office is without jurisdiction to render a decision to you as an authorized certifying officer upon general question not involved in the certification of the voucher accompanying your request for a decision. See 38 Comp. Gen. 5 (1958); 26 id. 797 (1947) and 24 id. 546 (1945). Since question "b" relates to the serving of a subpoena, which is not involved in the present case, we may not answer this question.

Therefore, the voucher returned herewith may not be certified for payment.

Sincerely yours,

PAUL G. DEBLING

For the Comptroller General
of the United States

Enclosure

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