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

D-178458

JUN 22 1973

Mr. H. Lavall Sackett
Missile and Ordnance Repair Section
Office Symbol HAKPB
Hill Air Force Base, Utah 84041

Dear Mr. Sackett:

We refer to your letter of November 3, 1972, again requesting overtime compensation for 10-1/2 hours of travel time performed on January 30, 1970.

Your claim was initially denied by our Transportation and Claims Division's Settlement Certificate dated July 13, 1972, because scheduling of the "simulated emergency" which necessitated your travel was within administrative control. The circumstances of your travel thus were properly held not to meet the criterion set forth at 5 U.S.C. 5542(b)(2)(B)(iv), nor was there any indication that those circumstances otherwise met the criteria contained at 5 U.S.C. 5542(b)(2)(B)(i)-(iii).

You now contend that during the particular travel in question you were assigned and acted as a "courier" in traveling with emergency drain equipment to Vanjenberg Air Force Base, and you thus maintain that your travel met the criteria set forth at 5544(a)(1) or (ii) in that it either involved the performance of work while traveling or was incident to travel which involved the performance of work while traveling. By way of clarification, we note that our Transportation and Claims Division's reference to 5 U.S.C. 5542(b)(2)(B)(i) - (iv) was made on the assumption that you were a General Schedule employee rather than a wage board employee, to which your reference, 5 U.S.C. 5544(a), would be applicable. Since the provisions of both sections are identical, any error made in that assumption is of no consequence. In the absence of other implementing instructions applicable to wage board employees, we regard the regulations of the Civil Service Commission implementing 5 U.S.C. 5542, Federal Personnel Manual Supplement 990-2, Book 550, subchapter S1-3, as instructive for purposes of the interpretation of 5 U.S.C. 5544.

The Department of the Air Force reports that tools and equipment were to accompany you on your travel. The travel order for you and Messrs. Ben H. Bodily and Lowell R. Staker indicates that transportation

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of "One hundred pounds/two pieces" excess baggage per employee was authorized. There is no indication, however, that the transportation of that equipment was other than incidental to your transportation or that your function during travel was to accompany, protect or perform work on the equipment.

The conditions set forth at 5 U.S.C. 5542(b)(2)(B)(i) and (ii) and at 5 U.S.C. 5544(a)(i) and (ii), that travel involve work or that it be incident to travel that involves the performance of work while traveling, are explained at Federal Personnel Manual Supplement 990-2, Book 550, subchapter SI-3b(2)(c)(iv) as follows:

Travel which involves the performance of work while traveling generally means, within the statute and the Commission's regulations, work which can only be performed while traveling (such as monitoring communications or signal devices used in air or rail traffic or escorting a prisoner to a distant prison). On the other hand, when an agency requires an employee to perform work while traveling, the time spent performing the work is work even though it is the kind of work that would ordinarily be performed at the employee's place of business. In this latter situation, the criteria used in determining whether or not the work was required to be performed while traveling will be that which is used in determining whether or not overtime work is officially ordered or approved. Pay, if warranted, will be limited to time actually spent working.

Travel which "is incident to travel that involves the performance of work while traveling" is a new condition under which travel is considered to be hours of employment. An employee generally will be in this situation when he is on a "deadhead" trip, either traveling to a destination to board a means of transportation upon which he will be performing work while traveling, or, having performed work while traveling, returning to his official duty station. Entitlement under this condition is limited to the situation where the work performed while traveling is work which can only be performed while traveling. It should be noted that the travel still must meet the requirement of being "away from the official duty station" to be considered hours of employment. (See

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Comptroller General decision B-163608, April 29, 1968.) An example of travel of this type is a truck driver deadheading to a point of pickup of a truck to be driven to another destination. An example of travel not meeting this condition would be travel by an employee to a point to hold a hearing even though he is required to review the transcript during his return trip (which would be payable as overtime work) since this is not the kind of work which can only be performed while traveling.

A courier is one whose duties include carrying information, mail, supplies, etc., work which to a large extent can be performed only while traveling and which would be compensable under (i) of subsection 5546. A courier's return travel after the delivery of information or supplies would be compensable under (ii) of said subsection as incident to travel which involves the performance of work while traveling. In most instances of travel, a Government employee will necessarily transport supplies or equipment and to this extent incidentally serve a "courier" function. We have expressly held, however, that the fact that incident to the purpose of travel, files, documents, supplies, etc. are transported, does not change the character of travel. 38 Comp. Gen. 142 (1958), 40 Comp. Gen. 439 (1961), 51 Comp. Gen. 727 (1972), B-139286, October 4, 1963, B-163211, July 31, 1968, B-176756, February 21, 1973.

Whether the transportation of equipment is merely incidental to the employee's travel, or is itself the employee's primary function is for determination by the administrative agency. In your case, the Department of the Air Force has indicated only that transportation of equipment was authorized incident to your travel. The record gives no indication that your responsibility for the equipment transported was different from Messrs. Bodily's or Staker's, or that any or all of you were to serve primarily as a courier for the equipment during travel. We thus do not regard your travel as having involved the performance of work while traveling. Similarly, there would appear to be no basis for your travel to be regarded as incident to travel that involved the performance of work while traveling. Accordingly, the settlement of July 13, 1972, disallowing your claim is affirmed.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States

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cc: Directorate of Military Pay Operations; Air Force Accounting & Finance Center; 3800 York Street; Denver, Colorado 80205
Re: AFAPC Form G-400 dated 2/10/71