

20 July 1949

Chief, GFB

Office of the General Counsel

Audit Branch Memorandum No. 174

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1. Reference is made to your memorandum of 8 July 1949, transmitting therewith (a) copy of Audit Branch Memorandum No. 174 which raises an exception on payments of per diem in the amount of \$137.00 to Miss [redacted] while in training in Washington, D.C. preparatory to foreign assignment, and (b) Miss [redacted] statement which adds certain factual information to the record. You request the opinion of this office as to whether the payments involved are within the provision of Public Law 600 and Administrative Instruction 30-5, the provision of which was issued on 5 December 1946.

2. The facts in this case are outlined below:

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Miss [redacted] resided in Washington, D.C. from December 1942 to October 1945, at which time she was employed by the Office of Strategic Services and the War Department respectively, at foreign stations, returning to the United States in February of 1947. She was separated at the Port of Debarkation, New York, and placed on a terminal furlough for a period not to exceed 90 days from 9 February 1947, part of which was leave without pay, so that a break in service would be avoided in the event she returned to Government employment within the 90 day period.

3. Before proceeding to the home of her sister in Seattle, Washington, she came to Washington, D.C. for the purpose of determining the possibilities of a further overseas assignment, as a result of a prior exchange of correspondence with [redacted]. Following conferences with representatives of this Agency, to the effect that her employment at an overseas post, subject to necessary clearances, was a practical certitude, Miss [redacted] departed for Seattle, Washington and other points with the express understanding that she would return to Washington as soon as she was required to begin processing for employment and overseas assignment, having stressed at all times, as a condition of her employment, that she would not accept employment in Washington, D.C. but only to a foreign post. She returned to Washington, D.C. early in April, prior to the expiration of the 90-day period and, after having contacted the representatives of this Agency, took the required tests and began her processing, her EMP date being 28 April 1947. During this period she stayed with friends.

4. It now becomes necessary to follow Miss [redacted] status somewhat closely. She still retained her status as an employee, even though on EMOP for the latter portion of the aforesaid 9 week travel

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period. There was every assurance, and her return was so conditioned, that when she returned to Washington from her travels, it would only be for the purpose of receiving necessary processing prior to departure for a new overseas assignment. Her presence in Washington, D.C. was a temporary residence, a sojourning on the part of one whose plans require that she be here only sufficient time to prepare for the assumption of residence elsewhere, and the responsibilities incident thereto. When she returned from overseas and was separated at New York she continued in a leave status, and time preserved her employee status. Though she had no official station as such at the time of separation, it appears consistent to compare her to an employee who, after completion of leave at her own expense, proceeds to Washington for further training before being assigned to another post.

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5. As we have stated in a previous memorandum, we do not feel that the term "actual residence" need be restricted to a person's physical presence, () and, in the case concerned, it appears that upon her appointment, or assignment, for training in Washington, D.C. she happened to be physically present in Washington, D.C., but she had no place of actual residence. At that moment she had no intent to reside permanently or for an extended period of time in Seattle, New York or Washington, or any other place except her, as yet undetermined, future post overseas.

6. Hence, for the reasons advanced above, it is the opinion of this office that the case considered falls within the provisions of P.L. 600 and () and pay dicit was properly authorized.

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cc: Subject
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