



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

ACCOUNTING AND FINANCIAL  
MANAGEMENT DIVISION

B-214210

June 6, 1984

The Honorable Patricia Schroeder  
Chairwoman, Subcommittee on Civil  
Service  
Committee on Post Office and  
Civil Service  
House of Representatives



124422

Dear Madam Chairwoman:

Subject: Inquiry Into Allegations Against the Chairman,  
Merit Systems Protection Board (GAO/AFMD-84-65)

Pursuant to your request of January 26, 1984, we reviewed the anonymous allegations you received regarding travel and leave activities of Herbert E. Ellingwood, Chairman, Merit Systems Protection Board, (MSPB). We also included in our review an allegation received over the GAO hotline concerning Mr. Ellingwood's use of a vehicle for home-to-work transportation. Our review covered the period December 18, 1981, when Mr. Ellingwood became Chairman, through February 23, 1984. We reviewed the Chairman's travel orders and travel vouchers, and conducted numerous interviews with MSPB officials.

Our work disclosed the following.

- During the time period reviewed the Chairman received thirty honorariums for speeches made to religious groups. Receipt of seven honorariums coincided with official travel, but in each instance, the speeches were made while he was on his personal time or on a leave of absence. The Chairman did not receive any honorariums for speeches made while conducting official business.
- The Chairman made five trips to California while on official travel; on all five of the trips he conducted official government business.
- The Chairman has made no attempt to cover-up the nature of his travel.

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- The MSPB's travel expenses for a January 1984 management conference could have been about \$9,900 less if the conference had been held in Washington, D.C., instead of San Francisco, California. The MSPB's rationale for the site selected is given below.
- The Chairman's trips to China were for personal reasons and at no cost to the government.
- The Chairman uses a chauffeured government vehicle for home-to-work transportation notwithstanding the provisions of 31 U.S.C. 1344, which establish such transportation as non-official. However, under a GAO decision dated June 3, 1983, the Chairman can continue such use until the end of the current session of Congress.
- MSPB appropriations were augmented when the New York Life Insurance Company paid the Chairman's lodging costs while he was visiting MSPB's New York Regional Office. Upon learning of a possible augmentation problem, the Chairman reimbursed the insurance company for the entire lodging costs.

The details of our review follow.

#### HONORARIUMS RECEIVED

It was alleged that the Chairman misused travel monies by taking official trips for the primary purpose of making speeches and receiving honorariums. We found that the Chairman took nineteen official trips where travel orders and travel vouchers were prepared during the period December 18, 1981, through February 23, 1984.<sup>1/</sup> We were provided justification for each of the trips. On five of the trips, the Chairman received seven honorariums for speeches made to religious organizations (see encl. I). However, each speech was made while the Chairman was on a leave of absence or during his personal time. (An officer or employee of an agency may accept honorariums while on personal business as long as each honorarium does not exceed \$2,000, excluding expenses; and as long as the activity does not raise a conflict of interest.)

In addition, the Chairman received twenty-three other honorariums for similiar speeches which were not made in conjunction with official travel. Again we determined that all the speeches were given during his personal time, or while on a leave of absence (see encl. II). Finally, we determined that the Chairman

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<sup>1/</sup>The Chairman determined in August 1983 that a June 1982 trip to Chicago was more personal than business, and repaid the government the \$280.29 he had been reimbursed for this trip.

made similar speeches on nine other occasions and while he did not receive honorariums, he was reimbursed for lodging and/or transportation expenses (see encl. III).

As a political appointee, the Chairman is exempt from the Annual and Sick Leave Act (5 U.S.C. 6301 (2)(x)); he is on call at all times and works whatever hours are necessary to meet his official responsibilities. The Chairman enjoys complete freedom to absent himself from duty as he sees fit. Thus, while on official travel the Chairman may determine hours for official work and for personal business that meet his needs. Our review showed that during calendar year 1982, the Chairman took a leave of absence on forty-nine workdays. In calendar year 1983 he took a leave of absence on twenty-nine workdays and during the period January 1, 1984 to February 23, 1984, he took a leave of absence on nine workdays.

TRIPS MADE TO CALIFORNIA  
WHILE ON OFFICIAL TRAVEL

It was alleged that the Chairman traveled to California several times to conduct personal business at government expense, and that he was spending "many Mondays" in California conducting prayer meetings. Since the allegation was made anonymously, we could not follow it up to determine the significance of the involvement of Mondays in the allegation. Our review showed that the Chairman visited California on five of the nineteen occasions while on official travel and that three of the trips included Mondays.<sup>2/</sup>

According to MSPB officials, the five trips to California were necessary because of conditions in the San Francisco Regional Office. The former director of the San Francisco Regional Office resigned shortly before the Chairman took office, in December 1981, and a number of acting regional directors had been directing office operations. MSPB cases were not being processed in a timely manner and there were difficulties with the performances of both the former and current administrative officers. MSPB provided the following descriptions of the Chairman's business agendas during each trip:

March 1982	--conferred with Acting Regional Director.
April 1982	--met with new Regional Director and staff, and with General Services Administration regarding office space problems.

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<sup>2/</sup>A travel voucher for a June 1982 trip to Chicago mentions another trip to California that the Chairman made on his own time and at his own expense. He received two honorariums while in California on this trip.

- January 1983 --discussed case tracking, case backlog, and office space issues.
- September 1983 --performed a management review of the office with the Managing Director and Executive Assistant.
- January 1984 --attended MSPB management seminar in San Francisco, in conjunction with the regional directors meeting.

ALLEGED COVER-UP OF TRAVEL

It was alleged that the Chairman attempted to cover-up the nature of his trips after congressional investigators inquired about his travel in April or May 1983. We contacted the congressional office involved and found that the office had received allegations involving the Chairman's travel activities. The allegations were similar to those received by GAO. The congressional staff said that their review did not disclose any irregularities in the Chairman's travel. Our review did not disclose any attempts to cover-up the nature of the Chairman's trips.

REGIONAL DIRECTORS MEETING/MANAGEMENT  
CONFERENCE HELD IN SAN FRANCISCO, CALIFORNIA

It was alleged that the Board spent thousands of dollars to send more than a dozen headquarters officials to California for a management conference when the same meeting could have been held in Washington, D.C., at little or no cost. We found that the MSPB did hold a Regional Directors Management Conference in San Francisco, California, on January 26 and 27, 1984. Twenty-seven employees attended the conference; sixteen were from Washington, D.C., and eleven were from each of MSPB's eleven regional offices.

MSPB officials provided the following explanation and documentation for having the conference in San Francisco:

- The past pattern was to bring regional participants to the Washington, D.C. area for the conferences. (Reston, Virginia, in August 1982; Leesburg, Virginia in December 1982; and Emmitsburg, Maryland in October 1983). The MSPB scheduled this activity in San Francisco because they wanted to hold some of the conferences in regional offices. They scheduled San Francisco for January 1984, Boston for May 1984 and Chicago for August 1984. However, the proposed Boston conference was held in Washington, D.C. and the Chicago conference has been cancelled.

--The reason for the sixteen headquarters participants was because the San Francisco regional directors' conference was expanded to include headquarters managers who had attended a planning workshop held in conjunction with the October 1983 Emmitsburg regional directors meeting. Documentation provided by the MSPB showed that the workshop was not completed and was continued in San Francisco to provide regional directors an opportunity to have input into plans and goals for the next twelve to eighteen months.

MSPB spent \$13,520 on travel expenses to hold the conference in San Francisco, California. Using the General Service Administration's transportation and per diem rates, we determined that if the conference had been held in Washington, D.C., the travel cost would have been about \$3,640, or about \$9,900 less than the travel expenses for the San Francisco conference.

#### TRIPS TO CHINA

It was alleged that the Chairman may have taken personal trips to China at government expense. We found that the Chairman made two personal trips to China, one from October 30, 1982, to November 18, 1982, and the second from February 8, 1984, to February 19, 1984. We determined that the Chairman took a leave of absence on those dates and that no travel orders or travel vouchers were processed for either trip. The government, therefore, did not incur any expenses.

#### MISUSE OF GOVERNMENT VEHICLE

It was alleged that the Chairman has a government driver pick him up at his home in the morning and take him home from work at night in a government vehicle.

We found that the Chairman does use a government driver and vehicle for home-to-work transportation and that this is prohibited by 31 U.S.C. 1344. However, the Chairman is within the purview of a GAO Comptroller General decision (B-210555), dated June 3, 1983, entitled, "Use of Government Vehicles for Transportation Between Home and Work," which notes that there is some uncertainty throughout the government about who may receive home-to-work transportation in spite of the statutory prohibition against using such transportation. The decision states in part:

"Because so many agencies have relied on apparent acquiescence by the Congress during the appropriations process when funds for passenger vehicles were appropriated without imposing any limits on an agency's discretion to determine the scope of "official business,"

and because dicta in GAO's own decisions may have contributed to the impression that use of cars for home-to-work transportation was a matter of agency discretion, GAO does not think it appropriate to seek recovery for past misuse of vehicles, (except for those few agencies whose use of vehicles was restricted by specific Congressional enactments). This decision is intended to apply prospectively only. Moreover, [in order to allow the Congress time to review the matter] GAO will not question such continued use of vehicles to transport heads of non-cabinet agencies and the respective seconds-in-command of both cabinet and non-cabinet agencies until the close of this Congress."

GAO considers the Chairman to be an agency head. Therefore, there is no need to institute recoupment action against the Chairman prior to the close of the current Congress. However, this "moratorium" on recoupment for agency heads and their respective principal deputies does not mean that the GAO believes such transportation is proper under the present law.

#### AUGMENTATION OF MSPB's APPROPRIATIONS

During a March 23-25, 1982, business trip to MSPB's New York Regional Office the Chairman, as part of his official duties, delivered a speech on March 24, 1982, a Wednesday morning, before a group of New York Life Insurance Company executives. New York Life Insurance Company paid the Chairman's lodging costs of \$310.25 for March 23 and 24. The Chairman did not receive any additional monies. Generally, donations from private sources, either in cash or in kind, for official travel to conduct government business constitutes an augmentation, unless the employing agency has statutory authority to accept gifts. MSPB does not have that authority. We concluded that the payment by the New York Life Insurance Company was an improper augmentation of MSPB's appropriations.

Specifically, the MSPB's appropriations were augmented by the amount that the agency was obligated to pay for the Chairman's March 23 and 24, 1982, expenses. For these days the government was authorized to pay for the Chairman's actual subsistence expenses while in New York, including meals and lodging costs, not to exceed \$75 per day. For the two days the Chairman claimed and was reimbursed \$25 in meal expenses, but claimed nothing for lodgings. Since the MSPB must pay for the official travel of its Chairman, these hotel costs should not have been paid by the New York Life Insurance Company and their paying the hotel bill had the effect of augmenting MSPB's appropriation by the amount the

Chairman could have claimed as reimbursement or \$125 [(2 x \$75) - \$25]. However, on April 24, 1984, the Chairman sent a check for \$310.25 to the New York Life Insurance Company with a letter explaining that the company had inadvertently augmented MSPB's budget allocation. Since the Chairman returned the full amount paid by the New York Life Insurance Company, the appropriation augmentation no longer exists and he now can make a claim against the government under 5 U.S.C. 5702, for the actual subsistence expenses totaling \$125. Because of travel expense limitations imposed on travel by federal employees, the Chairman must bear the excess cost of his lodgings in the amount of \$185.25 (\$310.25 - \$125).

We hope that this letter adequately addresses the allegations you received regarding Chairman Ellingwood. The contents of this letter were discussed with Chairman Ellingwood who concurred with these findings.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report for 10 days. At that time we will send copies to the Chairman, MSPB; Director of the Office of Management and Budget, and appropriate congressional committees; and make copies available to others upon request.

Sincerely yours,

*Arthur R. Goldbeck for*  
Frederick D. Wolf  
Director

Enclosures - 3

OFFICIAL TRIPS TAKEN BY THE CHAIRMAN AND EXPENSES CLAIMED

<u>Period of travel</u>	<u>Location of business<sup>a</sup></u>	<u>Meals and other expenses</u>	<u>Lodging expenses</u>	<u>Transportation expenses</u>	<u>Total cost to government</u>
2/18/82 - 2/18/82	Philidelphia Regional Office	\$ 17.25	none	\$ 90.00	\$107.25
3/5/82 - 3/7/82	San Francisco and Denver Regional Offices	102.14	none	340.00	442.14
3/23/82 - 3/25/82	New York Regional Office	70.25	none	63.00	133.25
4/23/82 - 5/2/82	San Francisco and Seattle Regional Offices	31.40	none	424.00	455.40
5/18/82 - 5/21/82	St. Louis and Dallas Regional Offices	19.35	75.00	361.00	455.35
∞ 6/3/82 - 6/9/82*	Chicago Regional Office (Stopped in San Francisco on personal business before going to Chicago)	7.79	54.50	218.00	280.29 <sup>b</sup>
6/15/82 - 6/15/82	Reston, Virginia to attend agency General Counsel Conference	6.00	none	6.00	12.00
8/8/82 - 8/10/82	Atlanta Regional Office	75.25	69.50	206.00	350.75
9/9/82 - 9/10/82	Boston Regional Office	5.23	69.77	101.00	176.00
12/9/82 - 12/10/82	New York Regional Office	42.63	65.87	80.00	188.50

<sup>a</sup> All travel originated in Washington , D.C.

<sup>b</sup> Mr. Ellingwood was reimbursed \$280.29 for the Chicago portion of this trip on November 30, 1982. He repaid the whole<sup>b</sup> amount on August 5, 1983, because he believed the trip was more personal than business.

\* Honorarium(s) received.

<u>Period of travel</u>	<u>Location of business</u>	<u>Meals and other expenses</u>	<u>Lodging expenses</u>	<u>Transportation expenses</u>	<u>Total cost to government</u>
1/13/83 - 1/18/83*	San Francisco and Chicago Regional Offices	59.40	none	none	59.40 <sup>c</sup>
4/15/83 - 4/18/83	Denver Regional Office	18.30	none	249.00	267.30
6/15/83 - 6/16/83	Harpers Ferry, West Virginia to attend OPM Conference	19.55	30.45	none	50.00
8/27/83 - 8/30/83*	Chicago Regional Office	38.18	56.73	164.00	258.91
9/10/83 - 9/14/83	San Francisco and Seattle Regional Offices	183.31	53.70	388.00	625.01
9/15/83 - 9/16/83	Philadelphia Regional Office	5.25	none	118.00	123.25
12/9/83 - 12/9/83	Boston Regional Office	11.00	none	142.00	153.00
1/7/84 - 1/9/84*	Atlanta Regional Office	25.25	38.88	178.00	242.13
1/25/84 - 1/28/84*	San Francisco Management Planning Seminar and Regional Directors meeting	34.00	none	338.00	372.00

<sup>c</sup> On this trip Mr. Ellingwood stated he was on personal business, however, while in the two cities he visited the two regional offices. He claimed expenses associated with the visits. GAO determined that he is eligible to claim the expenses since they were valid expenses and business related.

\* Honorarium(s) received.

LISTING OF HONORARIUMS

<u>Date</u>	<u>Location</u>	<u>Honorariums*</u>
May 29, 1982	Deptford, New Jersey	\$ 456
June 3, 1982	Sacramento, California	950**
June 6, 1982	Sacramento, California	500**
June 20, 1982	Roswell, New Mexico	1,500
October 13, 1982	Roseville, California	126
October 22, 1982	Northridge, California	451
December 3, 1982	Tulsa, Oklahoma	300
December 31, 1982	Laguna Hills, California	496
December 31, 1982	Laguna Hills, California	200
January 8, 1983	Naples, Florida	200
January 13, 1983	Turlock, California	500**
January 17, 1983	Fridley, Minnesota	502**
January 29, 1983	Houston, Texas	427
January 29, 1983	Seabrook, Texas	300
March 25, 1983	Missoula, Montana	200
April 10, 1983	Lanham, Maryland	25
June 5, 1983	Sacramento, California	1,000
July 3, 1983	Tulsa, Oklahoma	500
July 10, 1983	Honolulu, Hawaii	546
August 27, 1983	Fort Worth, Texas	1,000**
November 3, 1983	Naples, Florida	21
November 16, 1983	Los Gatos, California	436
December 2, 1983	Laguna Hills, California	150
December 2, 1983	Laguna Hills, California	200
December 4, 1983	Watsonville, California	100
December 4, 1983	Aptos, California	500
January 8, 1984	Jacksonville, Florida	2,000**
January 23, 1984	Pocomoke, Maryland	250
January 28, 1984	Novako, California	550**
February 11, 1984	Kaohsiung, Taiwan	2,000
<b>Total</b>		<u><u>\$16,386</u></u>

\* An honorarium is a payment of money or anything of value received by an officer or employee of the federal government, if it is accepted as consideration for an appearance, speech, or article. It does not include payment for or provision of actual travel and subsistence, including transportation accommodations, and meals.

\*\*Honorarium was received while the Chairman was on an official trip. However, the fees were received for weekend speeches or speeches made during a leave of absence.

OCCASIONS WHERE ONLY EXPENSES  
WERE PAID BY PRIVATE SOURCES

<u>Date</u>	<u>Location</u>	<u>Lodging and/or transportation expenses</u>
March 19-21, 1982	Los Angeles, California (Joint Chinese University Association of Southern California)	\$ 650
June 19, 1982	Denver, Colorado (FGBMFI)*	650
July 3-9, 1982	Costa Mesa, California (FGBMFI)	500
July 27-28, 1982	Springfield, Missouri (Assemblies of God)	500
October 30- November 18, 1982	Trip to China**	2,600
March 29, 1983	Roswell, New Mexico (FGBMFI)	774
June 2, 1983	Auburn, California Forest Lake Christian School	399
August 17, 1983	Santa Ana, California Trinity Broadcasting Network	586
February 23, 1984	San Jose, Costa Rica Fellowship Foundation	633

\* Full Gospel Business Men's Fellowship International

\*\* Mr. Ellingwood represented the FGBMFI while overseas as their International Director.