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

B-196059(BRP)

December 18, 1979

The Honorable Herman E. Talmadge
United States Senate

Dear Senator Talmadge:

We refer to your letter of September 10, 1979, with enclosures, in which you request a report concerning reimbursement of actual subsistence expenses incurred by Mr. Dallas R. Marlowe, an employee of Robins Air Force Base, Georgia, while performing temporary duty in the Melville/Plainview, Long Island, New York, area in June 1978.

The facts and circumstances of record, briefly stated, are as follows: Mr. Marlowe was authorized a per diem allowance of \$35 per day to perform temporary duty in the Melville/Plainview area on June 20, 21, and 22, 1978. The Melville/Plainview area has not been designated as a high rate geographical area by the General Services Administration, as authorized by the Travel Expense Amendments Act of 1975, Public Law 94-22, May 19, 1975. Mr. Marlowe states that it is impossible to hold actual expenses within the maximum \$35 per diem allowed in the Melville/Plainview area. He reports that the least expensive and acceptable motel accommodations available anywhere in the area are \$32.10 per day. He states that by using the tax exemption form, the daily motel rate is lowered to \$30, which leaves \$5 per day to purchase three meals in an area where inexpensive meals cannot be found. During his temporary duty assignment in June 1978, his actual subsistence expenses exceeded the \$35 per diem allowance by more than 10 percent. He was reimbursed at the per diem allowance rate of \$35 per day.

Mr. Marlowe further reports that Civilian Personnel Pamphlet 64, Civilian Travel and Transportation, revised April 15, 1979, and issued by the Department of Defense, states that "an actual subsistence expense allowance may be authorized or approved when, because of the unusual nature of the conditions encountered on the assignment, the actual and necessary meal and lodging costs exceed the maximum per diem allowance by 10 percent or more, or when you have no alternative but to incur lodging costs which absorb all or nearly all

An employee claimed that his per diem expenses during a temporary duty assignment were more than the maximum allowed him. The employee contended that it was impossible to obtain less expensive meals and accommodations - last page

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of the maximum per diem allowance." He therefore contends that he should be reimbursed based upon the actual subsistence expenses which he incurred.

In our decision, 42 Comp. Gen. 440 (1963), in discussing the rationale for reimbursement of actual expenses "where due to the unusual circumstances of a travel assignment" the maximum per diem allowance is much less than the amount required to meet the actual and necessary requirements of the trip, we stated:

"We do not believe it was intended to apply to normal, routine travel in a high expense area unless some unusual circumstance of the particular travel assignment is involved. Any cost resulting solely from inflated prices would be common to all travelers in the area; and the circumstance becomes usual rather than unusual. If normal travel within specified areas could be excepted from the commuted per diem allowance on the basis of a general cost finding for the area, then the statutory limitation on the allowance can be nullified, whenever costs rise, without further legislative action. We do not believe the law was intended to permit that effect."

Section 5702(c), title 5, United States Code, as amended, provides that, by regulation, the General Services Administration may prescribe the conditions for reimbursing actual expenses when the per diem allowances are inadequate due to the unusual circumstances of the travel assignment. The General Services Administration implemented the 1975 statutory amendments by issuing Temporary Regulation A-11, Federal Travel Regulations (FTR) (FPMR 101-7), on May 19, 1975. Paragraph 10 of the temporary regulation amended paragraphs 1-8.1 through 1-8.3 of the FTR (May 1973), concerning travel situations involving unusual circumstances. Paragraph 10 and the current regulations, paragraphs 1-8.1 et seq., Temporary Regulation A-11, Supplement 4, April 29, 1977, provides for authorization or approval of actual expenses by agency heads, authorizes reimbursement of daily maximum rates not to exceed the statutory maximum of \$50 per day, and contains criteria for determining when unusual circumstances exist, together with several illustrative examples. However, FTR paragraph 1-8.1c(2) states that

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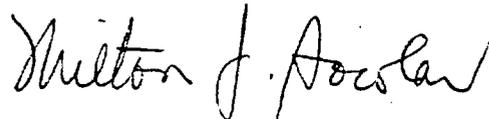
notwithstanding the outlined criteria, actual expenses shall not be authorized or approved for unusual circumstances solely on the basis of inflated lodging or meal costs since inflated costs are common to all travelers, citing 42 Comp. Gen. 440. See also 55 Comp. Gen. 609 (1976).

We would also point out that similar regulatory language as contained in Civilian Personnel Pamphlet 64, cited by the claimant, is also found in paragraph 1-8.1c, Temporary Regulation A-11, Supplement 4, April 29, 1977.

Since the temporary duty performed by Mr. Marlowe involved normal travel with no unusual circumstances involved, and the area of travel has not been designated as a high rate geographical area, he was properly reimbursed at a per diem allowance of \$35 per day. Moreover, since the \$35 rate is the maximum amount permitted by statute, 5 U.S.C. § 5702(a), it would take action by the Congress to increase the allowable amount to reflect today's higher lodging costs. We invite your attention to H. R. 5722, 96th Congress, which would amend the per diem statute to permit a higher per diem rate when warranted.

We regret that we are unable to be more helpful to your constituent. As you have requested, we are returning the enclosures submitted with your letter.

Sincerely yours,



For the Comptroller General
of the United States

Enclosures