

**DECISION**

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

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FILE: B-211818

DATE: February 14, 1984

MATTER OF: Durel R. Patterson - Per Diem While  
Staying at Residence Near Temporary  
Duty Site

**DIGEST:**

Employee claims reimbursement for reduced per diem rate (no lodging cost) while staying at his residence which is near his temporary duty site. When working at official duty station 65 miles from his residence, employee does not commute from his residence but stays at his in-laws' house. His travel orders authorized payment of per diem in accordance with Joint Travel Regulations (JTR). Both JTR and agency's own regulations provide for payment of reduced per diem (no lodging cost) in this situation. We hold that these regulations require payment of a reduced per diem rate under these circumstances.

The National Federation of Federal Employees (NFFE) has submitted a claim on behalf of Mr. Durel R. Patterson for per diem while residing at his family residence while on temporary duty at Baton Rouge, Louisiana. This request has been handled as a labor-relations matter under our procedures contained in 4 C.F.R. Part 22 (1983), and in this regard we have received a report from the Finance and Accounting Office for the New Orleans District Corps of Engineers, Department of the Army.

The issue presented is whether under the applicable regulations the employee is entitled to a reduced per diem rate while he stays at his own residence while on temporary duty. We hold that the employee is entitled to a reduced per diem (no lodging cost) based on the following analysis.

**FACTS**

The facts of this case are not in dispute. Mr. Durel R. Patterson is employed by the Department of the Army, New Orleans District Corps of Engineers. Mr. Patterson's permanent duty station has been Simmesport, Louisiana, since October 1, 1978. Mr. Patterson moved his

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residence in November 1979, from Simmesport to Baton Rouge, Louisiana, which is about 65 miles from his official duty station. Mr. Patterson is in a travel status a majority of the time and one of his temporary duty sites is Baton Rouge. While on temporary duty at Baton Rouge, Mr. Patterson resides at his residence there. Mr. Patterson has not claimed lodging costs while on temporary duty in Baton Rouge, but instead claims a reduced per diem of \$23 to cover food and other costs. His travel orders state that per diem is authorized in accordance with Joint Travel Regulations. When assigned to work at his permanent duty station in Simmesport, Mr. Patterson commutes from his wife's parents' house in that area.

ANALYSIS

The authority for the payment of per diem to Federal employees traveling on official business away from their designated post of duty is contained in 5 U.S.C. § 5702 (1982), and the implementing regulations found at Part 7, Chapter 1 of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973). Generally, the expenses incurred by an employee which may be properly reimbursed are those expenses which are incurred by reason of travel and in addition to the usual costs of maintaining a residence. See Sanford O. Silver, 56 Comp. Gen. 223 (1977); and Bornhoft v. United States, 137 Ct. Cl. 134 (1956).

The facts in the Bornhoft case are similar to the facts here, except that in the present case Mr. Patterson commutes from his wife's parents' house while working at his permanent duty station. Based on this factor, his representative argues that the provisions of the Joint Travel Regulations Volume II (2 JTR), para. C 4552-2m apply. That regulation has been amended and currently provides that:

"When an employee performs temporary duty at the place of his family domicile, which is other than the place from which he commutes to work each day while on duty at his permanent duty station, per diem will be computed in accordance with the provisions of subpar. a, except that no cost for lodging will be allowed for any day that the employee occupies lodgings at the family domicile (56 Comp. Gen. 223)."

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The subparagraph "a" referred to in the above-cited regulation establishes a lodgings plus system for determining the per diem rate and a flat \$23 amount is provided for meals and incidental expenses.

This regulation was a direct result of our decision in Sanford O. Silver, 56 Comp. Gen. 223, and the Bornhoft case. In its submission, the agency argues that the implication of the above-cited regulation is that the family domicile must be different from the employee's domicile or residence. The agency argues that the fact that the employee sleeps over at his in-laws' house, while working at his permanent duty station, does not qualify that house as his residence. See generally Gilbert C. Morgan, 57 Comp. Gen. 32 (1977).

In addition, the agency cites two regulations which it states bar reimbursement of per diem in this case. First, 2 JTR, para. C 4550-4, states that per diem will not be authorized if no additional subsistence expenses are incurred. The agency argues that Mr. Patterson has not incurred any additional subsistence expense. Second, a local District regulation, para. 10e(2), DR 55-1-1, states that a per diem allowance will not be authorized or reimbursement allowed for assignments at locations of a shorter distance than the distance allowed from the abode which the employee normally commutes to the permanent duty station.

Our decisions have long held that it is within the discretion of the agency to pay per diem only to the extent it is necessary to cover the increased expenses arising from the performance of official duty. Gilbert C. Morgan, 55 Comp. Gen. 1323 (1976); 31 Comp. Gen. 264 (1952). However, in this case the travel orders authorized per diem in accordance with the JTR. As shown above, the JTR provides for reimbursement for meal costs when an employee performs temporary duty at the place of his family domicile which is other than the place from which he commutes to work each day while on duty at his permanent duty station. The fact that his in-laws' house is not Mr. Patterson's residence is not germane since the regulation does not require that.

We have considered this issue in Joseph F. Maron, B-188080, December 15, 1977. The facts in that case were

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similar to this and we held that the employee was entitled to a per diem rate for food and incidental expenses which at that time was \$14. We stated that the agency could reduce the per diem amount in accordance with regulations such as 2 JTR para. C4550-4, but that this must be done in advance.

In this case since Mr. Patterson's per diem rate was not reduced in advance in accordance with applicable regulations, and since he was authorized per diem in accordance with the JTR, the family domicile rule in 2 JTR para. C-4552-2m, quoted above, provides the necessary authority for payment of the applicable rate.

Therefore, Mr. Patterson's claim for the meals and miscellaneous expenses portion of per diem should be certified for payment.

*Milton J. Fowler*  
for Comptroller General  
of the United States