

DECISION

95306
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-181573

DATE: FEB 27 1975

MATTER OF: James C. Myers - Relocation travel of dependents. 50583

DIGEST: 1. No authority exists for payment of additional per diem for dependents of National Oceanic and Atmospheric Administration employee for period of hospitalization of employee's wife during separate travel incident to permanent change of station, since entitlement is limited to constructive cost of direct travel.

2. Where wife of National Oceanic and Atmospheric Administration employee performed first portion of permanent-change-of-station travel by privately owned vehicle, reimbursement was properly based upon mileage for this portion rather than higher cost of commercial travel, since constructive cost of direct travel represents upper limit on Government's liability and is to be reduced if actual travel is accomplished for less.

This action concerns an appeal by Mr. James C. Myers from our Transportation and Claims Division's settlement, dated March 29, 1973, of his claim for additional per diem for his wife and children while traveling in June 1971, incident to his permanent-change-of-station move from Cape Hatteras, North Carolina, to Garden City, Kansas. Mr. Myers is an employee of the National Oceanic and Atmospheric Administration, Department of Commerce.

Travel was authorized by Travel Order No. T1-WFC-0796, dated April 6, 1971. Pursuant to this order, Mr. Myers performed his travel in April 1971, with his wife and two children (then ages 8 and 11) scheduled to follow in June upon expiration of the school term. Mrs. Myers, then 4 months pregnant, departed Cape Hatteras by privately owned vehicle with the children at 11 a.m. on June 4, arriving at Norfolk, Virginia, at 2 p.m., a distance of approximately 150 miles. They left Norfolk by commercial air carrier at 3:20 p.m. on the same day, and arrived at Indianapolis, Indiana, a scheduled stop, later that evening. Mrs. Myers became ill at Indianapolis, was hospitalized, and suffered a miscarriage. She was hospitalized from June 7 to June 13. She was advised by her doctor not to travel for at least a week and she did not resume travel until June 22, at which time she and the children proceeded to Garden City by air.

After National Oceanic and Atmospheric Administration (NOAA) paid certain allowable expenses on his original voucher, Mr. Myers submitted

a reclaim voucher to our Transportation and Claims Division (TCD) for \$350, to cover per diem for his wife and children during the period of Mrs. Myers' hospitalization. TCD disallowed the claim and further discovered that Mr. Myers had been overpaid for the cost of his dependents' constructive air travel from Norfolk to Garden City. TCD found that Mr. Myers was indebted to the United States in the amount of \$61.17 and, pursuant to the Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1970), instructed NOAA to take appropriate administrative action to recover the indebtedness. It is from this settlement that Mr. Myers has appealed.

As pointed out in the TCD settlement, reimbursement of travel expenses for Mr. Myers' wife and children during the times herein pertinent is governed by section 2.2, now Office of Management and Budget Circular No. A-56, Revised June 26, 1969, portions of which are set forth below:

"a. Transportation. Except as specifically provided in these regulations, allowable travel expenses for the employee's immediate family, including transportation, are governed by 5 U.S.C. 5701-5703 and the Standardized Government Travel Regulations. Travel of the immediate family may begin at the employee's old official station or some other point, or partially at both, or may end at the new official station or some other place selected by the employee, or partially at both. However, the cost to the Government for transportation of the immediate family will not exceed the allowable cost by usually traveled route between the employee's old and new official station.

"b. Per diem allowance when en route between employee's old and new official station. When an employee is transferred, an allowance shall be paid for per diem in lieu of subsistence expenses incurred by the employee's immediate family while traveling between the old and new official stations, regardless of where the old and new stations are located. If the actual travel involves departure and/or destination points other than the old or new official station, the per diem allowance will not exceed the amount to which members of the immediate family would have been entitled if they had traveled by usually traveled route between the old and new official stations. * * *

The above-cited regulations authorize reimbursement for travel by direct route. There is no authority for the payment of additional per diem to a member of an employee's immediate family for delay occasioned by that member's illness. See B-175436, April 27, 1972. Regulations authorizing per diem for illness or injury occurred while in a travel status (e.g., section 6.5a, OMB Circular No. A-7, March 1, 1965, now Federal Travel Regulations, (FPMR 101-7, para. 1-7-5b(1)),

are in implementation of 5 U.S.C. § 5702(b) (1970) which prescribes per diem for the employee. Such regulations do not apply to dependents. See B-174242, November 30, 1971.

Mr. Myers postulates in his appeal a hypothetical travel schedule from Cape Hatteras to Garden City which would have resulted in total travel expenses in excess of those determined to be payable under the voucher. Based on this, he contends that the true constructive cost was in excess of his original claim. The amount actually found payable was based on mileage from Cape Hatteras to Norfolk (since this part of the journey was accomplished by privately owned vehicle) and the constructive cost of air travel from Norfolk to Garden City, plus per diem for travel time based on the constructive direct route. This is in accordance with section 2.2b, Circular No. A-56, supra. The difference between the two constructive travel schedules arises because Mr. Myers' hypothetical schedule assumed travel from Cape Hatteras to Norfolk by mail bus (apparently the only available public transportation), which would have resulted in a later arrival at Norfolk and an overnight delay there while awaiting air connections.

The concept of "constructive cost" does not represent an absolute entitlement payable in all events. It is, rather, an upper limit on the Government's liability. If the cost of the travel actually performed is in whole or in part less than the cost of the constructive direct route, the Government's liability is properly determined upon the lesser amount. Cf. B-181046, November 12, 1974. Payments in excess of the amounts authorized by law cannot be made, however deserving a particular situation may be.

From our review of the record, we find no basis to question either the denial of the claim for additional per diem or the overpayment charge. The settlement of our Transportation and Claims Division is accordingly sustained.

R. F. Keller
Deputy Comptroller General
of the United States