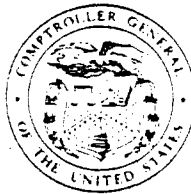


DECISION

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

51019

FILE: B-182715

DATE: AUG 28 1975

MATTER OF:

James E. Vaughn - Claim for additional per diem during temporary duty in Vietnam.

97447

DIGEST:

1. For periods during which civilian employee of Department of Army on temporary duty in Vietnam was advised Government quarters were not available but was not provided a certificate of nonavailability, employee is entitled to full rather than reduced per diem when it appears that Government quarters were not actually available and absence of certificates was not his fault.
2. However, for periods during which civilian employee of Department of Army on temporary duty in Vietnam was offered Government quarters but declined them, employee is entitled only to reduced per diem since the adequacy of Government quarters provided is primarily for consideration by agency and not by GAO.

This action is in reconsideration of the denial on September 10, 1974, by our Transportation and Claims Division, of the claim of Mr. James E. Vaughn for additional per diem during his tour of temporary duty in Vietnam. The claim was disallowed on the ground that there is no authority to pay additional per diem in excess of the reduced rate in absence of certificates of nonavailability of Government quarters.

Mr. Vaughn, a civilian employee of the U.S. Army Electronics Command, was on temporary duty in Vietnam from July through December 1969. By Travel Order Letter 3-69, dated June 25, 1969, Mr. Vaughn was directed to proceed on or about July 2, 1969, to Long Binh, Vietnam, for a period of approximately 180 days temporary duty. The travel order stated that the occupancy of available Government quarters was required during temporary duty in Vietnam pursuant to a determination dated July 23, 1968 (by the Secretary of the Army), under the provisions of 2 Joint Travel Regulations (JTR), para. C 1057-3. Further, the travel order stated that if Government quarters were not available, certificates of nonavailability had to be filed with each travel voucher submitted for payment.

Mr. Vaughn has filed a claim for 134-1/4 days of additional per diem for the period of time he was allowed only \$10 per day, the rate authorized by the JTR when Government quarters were occupied (or available but not utilized), rather than \$26 per day, the rate otherwise allowed for occupancy of non-Government quarters. Mr. Vaughn alleges that he inquired into the availability of Government quarters during his temporary duty and was either orally advised that none were available or assigned quarters he considered were unfit for habitation. It is noted that several pages were missing from Mr. Vaughn's supporting documents in the submission from the U.S. Army Finance Support Agency. These pages were provided to us by Mr. Vaughn in his appeal of our Transportation and Claims Division Settlement.

As noted in our Transportation and Claims Division Settlement, 2 JTR, para. C 8101-3d, provides for a reduced rate of per diem if Government quarters are used as lodgings at temporary duty points outside the United States. Paragraph C 1057 (Change 47, July 1, 1969) provides in pertinent part:

"C 1057 USE OF GOVERNMENT QUARTERS

"1. PRACTICABLE USE OF AVAILABLE QUARTERS. When adequate Government quarters are available, and their use would not be impracticable or interfere with the accomplishment of the purpose of a mission, employees performing temporary duty at an activity will be encouraged by their supervisors to use such quarters. Except as provided in subpars. 2 and 3, mandatory use of Government quarters while in a temporary duty status will not be required, nor will per diem allowances be subject to reduction on the basis of availability alone of such quarters. Certificates of nonavailability of Government quarters are not necessary and will not be required.

* * * * *

"3. SPECIAL PROJECTS AND MISSIONS. Employees assigned to special projects or missions may be required to occupy available Government quarters when a determination is made by the Secretary of a separate military department or the head of an agency of the Department of Defense that the

exigencies of the service require occupancy of such quarters to assure accomplishment of the project or mission. Travel orders will include citation of the determination and applicable conditions and limitations."

As further noted in the Transportation and Claims Division Settlement, the regulations also contemplate a reduction in the per diem when Government quarters are not utilized if a determination has been made that such use is necessary, as under "3" above. By DA Message 874737B, the Secretary of the Army, on July 23, 1968, made such a determination as required in para. C 1057-3, supra, which provided in pertinent part that:

"2. All civilian employees proceeding to Vietnam on TDY subsequent to receipt of this message will be informed that exigencies of service require occupancy of available Government quarters to facilitate accomplishment of USARV Mission, to provide for essential security of civilian employees and to insure availability to accomplish their TDY missions. Travel orders will include citation of determination on Para 1 above and statement that if Government quarters are not available, certificate(s) of nonavailability must be filed with each travel voucher submitted for payment."

The record indicates that this determination was noted on Mr. Vaughn's travel order.

This claim for additional per diem was considered and disallowed by the U.S. Army Finance Support Agency, Indianapolis, Indiana, which noted that the field office had not paid the full allowance because of the determination of the Secretary of the Army that civilian personnel would occupy available Government quarters. The report continues, "This is the reason why a nonavailability statement was not prepared."

Mr. Vaughn alleges that upon his arrival in Vietnam on July 4, 1969, he was driven to the Ramada Hotel Saigon and that he reported to the Long-Binh Housing Management Office on July 5, 1969, to request quarters. The claimant states that he was orally advised that there were no quarters available, that he would be called when quarters became available, but that he could not be furnished a certificate of

nonavailability of Government quarters. Mr. Vaughn states that he remained at the Ramada Hotel until July 14, 1969, a period of 10 days, when he was offered and accepted Government quarters until July 28, 1969. The claimant was assigned to Da-Nang from July 28, 1969, to August 28, 1969, where Government quarters were not made available but where he was provided a certificate of nonavailability, thus entitling him to full per diem.

Mr. Vaughn states further that he returned to Saigon August 28, 1969, and reported to the USAHAC Housing Management Division but was orally advised that quarters were not available and that he could not be provided a certificate of nonavailability. The claimant states that he obtained a room elsewhere in Saigon and that he returned to the housing office on September 6, 1969, at which time he was assigned a room in the Lucky Hotel. This period of time from August 28, 1969, to September 6, 1969, constituted 9-1/2 days. The claimant, however, declined to accept this assigned room citing the condition of the quarters as being unsafe and unhealthy. Finally, Mr. Vaughn says that because of the condition of the assigned room, the "discrimination and red tape involved," and the fact that he would be required to remove all possessions and relinquish the quarters if placed on a temporary assignment elsewhere in Vietnam, he did not further attempt to obtain temporary quarters for the remainder of his stay in Vietnam.

For a total period of 19-1/2 days, namely from July 4 to July 14, 1969, and from August 28, 1969, to September 6, 1969, Mr. Vaughn claims Government quarters were not available and certificates of nonavailability were not provided. The Army has not alleged that Government quarters were made available during this period and has stated only that certificates of nonavailability were not provided. It is noted that both on Mr. Vaughn's arrival in Vietnam and his return to Saigon, Government quarters were offered within 2 weeks.

This Office has held that where the lack of certificates did not occur through the fault of the claimant and where Government quarters reasonably were not made available, the claimant is entitled to the regular (full) rate of per diem. B-169490, June 15, 1970. Based on the record before us, it appears that Mr. Vaughn is entitled to the regular rate of per diem for 19-1/2 days.

As for the remainder of Mr. Vaughn's claim for additional per diem for 114-3/4 days, the record indicates that Government quarters were available but that the claimant declined to accept them for the reasons

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mentioned above. The adequacy of living quarters for Government employees is a matter primarily for consideration by the administrative office concerned, rather than by the General Accounting Office. Therefore, since the employee admits that Government quarters were made available and since no certificates of nonavailability for this period accompanied the travel voucher, there is no basis for payment of this portion of the claim. See B-170194, September 15, 1970; B-170972, October 20, 1970.

Accordingly, a settlement will be issued by our Transportation and Claims Division in the amount found due.

R.F. KELLER

Deputy Comptroller General
of the United States