

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

FILE: B-164228

DATE: OCT 9 1975

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MATTER OF:

**Retroactive Adjustment of Subsistence Allowance -
Sandra C. Britt, Derrol L. Cameron, Harold D. Hill
and Kenneth A. Douglas**

DIGEST:

Employees, authorized \$25 per day, were victims of attempted armed robbery and changed motels. They were then authorized \$35 per day actual subsistence. They claim expenses of \$6.68 and \$15.16 in excess of \$35 per day. Additional expenses may not be paid since there was no error which would permit exception to general rule that travel authorizations may not be retroactively modified. Also, there is no authority to exceed statutory limitation of \$40 per day for actual expenses.

An authorized certifying officer of the Financial Services Branch of the General Services Administration, Washington, D. C., has requested an advance decision as to whether he may certify for payment four supplemental vouchers for lodging expenses in excess of the \$35 daily maximum actual subsistence allowance authorized by amended travel orders. Two employees claim \$15.16 each and two \$6.68 each. The four employees were victims of an attempted armed robbery at their motel. Although one suspect was apprehended, the employees, fearing physical reprisals from the robbers still at large, changed motel accommodations immediately. Each employee paid for two motel rooms on the same day resulting in the excess expenses claimed.

The certifying officer has asked two questions in connection with these claims:

- "1) If the appropriate administrative officer approves an increase to the subsistence maximum of \$40.00, may we reimburse the employees for the \$5.00 difference between the \$40.00 and \$35.00, the amount already allowed?
- "2) Is there any basis upon which, in light of the extraordinary circumstances, we could properly reimburse the employees for the balance remaining over the \$40.00, or \$10.16?"

The record indicates that each of the employees was authorized a per diem allowance of \$25 per day. We assume such rate was fixed in

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accordance with Federal Travel Regulations (FPMR 101-7) para. 1-7.3c. Upon advice of the attempted robbery at the employees' motel and their move to another motel, each of the employees was authorized reimbursement of actual subsistence not to exceed \$35 per day. The amounts now claimed were disallowed on the employees' travel vouchers because they exceeded the \$35 per day actual subsistence expenses authorized.

The general rule is that travel orders may not be amended retroactively to increase or decrease rights or obligations already vested or fixed. See 28 Comp. Gen. 732 (1949); B-177665, March 9, 1973. Exceptions have been made to correct errors apparent on the face of the travel authorization, and to fulfill the original intent of the authorizing official to allow the statutory maximum allowance. See B-180970, November 7, 1974.

The instant case fits neither of these exceptions. Decision B-164228, June 17, 1968, noted by the authorized certifying officer, does not provide a basis for increasing the amount reimbursable. In that case an employee who had incurred additional lodging expenses as a result of a civil disorder in the vicinity of his hotel was reimbursed for such expenses. However, the proposed change in his travel authorization was from a per diem allowance to an actual subsistence allowance pursuant to subsection 6.12, Standardized Government Travel Regulations. In the instant case the requested change would be from one daily subsistence allowance maximum to the statutory maximum allowance. Approval of actual subsistence expenses may be made when an employee was authorized per diem. FTR para. 1-8.1e (May 1973). However, we are unaware of any regulation authorizing a change in the amount of properly authorized actual subsistence.

Additionally, in decision B-155141, October 20, 1964, costs incurred for two motel rooms in the same day due to unusual conditions were allowed under an actual subsistence expense authorization. We noted that the maximum daily allowance authorized on the travel order was an amount less than the statutory maximum. Since the agency has the responsibility to authorize the reimbursement of only necessary subsistence costs and had fixed the reimbursable rate, the decision held that the allowance would be subject to the limitation in the travel order.

In the instant case the employees were authorized actual expenses not to exceed \$35 per day after the agency was advised of the attempted armed robbery affecting them. Therefore, since the agency exercised its discretion to fix the \$35 limitation after consideration of the facts

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involved, there is no basis to pay an allowance in excess of such limitation. Concerning the question as to whether any amount could be paid in excess of \$40, we point out that 5 U.S.C. § 5703(d) (1970) provided that actual subsistence inside the continental United States could not exceed \$40 each day. Therefore, that limitation may not be exceeded.

Accordingly, both questions are answered in the negative, and the supplemental vouchers may not be certified for payment.

Thomas D. Morris

Acting

Comptroller General
of the United States