

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**FILE: B-184520
MATTER OF:

DATE: JUL 13 1976

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Marjorie T. McLendon - Claim for increased per diem and automobile expense

DIGEST:

1. Reduction of per diem allowance for temporary duty upheld when reduction was in accordance with cost of living survey as provided by Joint Travel Regulations, Volume II, para. C8051. Contention that other employees were overpaid does not constitute sufficient basis for sustaining claim to additional per diem allowance.
2. Allowance for mileage while on Government business in conformance with 5 U. S. C. § 5704 precludes additional reimbursement of ordinary costs of maintenance incident to the use of a privately owned vehicle.

By letter dated June 6, 1975, Ms. Marjorie T. McLendon requested reconsideration of our Transportation and Claims Division (now Claims Division) settlement Z-2446421 dated December 7, 1972, which disallowed her claim for additional per diem and automobile expenses while on temporary duty (TDY) at the Logistics Systems Support Center (LSSC) at Chambersburg, Pennsylvania, for the period December 9, 1969, through April 18, 1970. Although receiving \$22 per diem during this period of TDY, Ms. McLendon contends she is entitled to the legal maximum rate of \$25 per diem because other employees performing TDY at the same location received the maximum per diem rate of \$25 during the same period. She also claimed \$64 reimbursement for the purchase, mounting, balancing, and realignment of snow tires obtained for her private automobile while on temporary duty. The facts in Mrs. McLendon's case were fully stated on our Office settlement of December 7, 1972, and need not be repeated here except as pertinent to the present discussion of the case.

During the time she was on temporary duty, payment of her per diem allowance was authorized by 5 U. S. C. § 5702(a) (1966) which provided that an employee was "entitled to a per diem allowance prescribed by the agency concerned" that "may not exceed the rate of \$16." Public Law 91-114, approved November 10, 1969, increased the maximum per diem rate for travel within the limits of the "continental United States" from \$16, to \$25. A per diem

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increase authorized by statute is not automatic but requires an administrative action before a higher rate is effective. 49 Comp. Gen. 493 (1970). By Letter Orders Number 12-122, dated December 9, 1969, Ms. McLendon's travel orders were amended to authorize a per diem rate of \$22.

Paragraph C8101-2a, change 53, February 1, 1970, of Volume 2 of the Joint Travel Regulations (JTR), in accordance with this statute, prescribed a per diem rate of \$25 for Department of Defense regular salaried employees "Except as otherwise provided * * *." Paragraph C8051, change 29, October 1, 1967, of the JTR stated, in pertinent part:

"3. Reduced Per Diem Rates * * * The * * * rates prescribed are mandatory except that a lesser rate than the legal maximum rates referred to in para. C8101-2a and 3a will be prescribed when it is known that the cost of living at a place of temporary duty assignment does not justify the maximum per diem allowance. Accordingly, commanding officers or other officials will take action to determine and prescribe appropriate per diem rates under the following conditions:

* * * * *

"3. When a temporary duty assignment is for an extended period of time and less than the maximum per diem rate is factually justified for all or a portion of the time;"

Ms. McLendon's authorized per diem rate, along with several others, was reduced from \$25 to \$22 based on a survey conducted by the LSSC of the actual cost of extended temporary duty for employees in the Chambersburg area. Since both the LSSC's finding and her employing agency's resulting order were in accordance with paragraph C8051 of Volume 2 of the JTR, no basis exists to pay the maximum per diem rate. B-180492, May 17, 1974.

Ms. McLendon has stated that other employees have received the maximum per diem rate (\$25) while performing temporary duty at Chambersburg. The Department of the Army has advised

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our Office that it was the intent that all personnel on extended TDY be paid the indential rate. While some employees were inadvertently paid the maximum per diem rate (\$25) performing TDY at Chambersburg, action is being taken to recoup the overpayments.

As to Ms. McLendon's claim for reimbursement of the cost of the purchase of snow tires it may be stated that under the provisions of 5 U. S. C. § 5704, a mileage rate authorized for the use of a privately owned automobile is in lieu of actual expenses. The only actual expenses authorized for reimbursement are parking fees, ferry fares, and bridge, road and tunnel tolls.

We note that even when a particular law might permit the use of a privately owned automobile on an actual expense basis the Standardized Government Travel Regulations (§ 3.5a), in effect at the time the TDY was performed, indicate that reimbursement may not be made for:

"Charges for repairs, depreciation, replacements, grease, anti-freeze, flushing crankcase, towage, and similar speculative expenses."

Any expenses of the nature here involved are to be regarded as included in the mileage allowance. B-168252, November 18, 1969.

Accordingly, the action taken in the Settlement Certificate dated December 7, 1972, disallowing the claim is sustained.

Paul G. Dembling

For
Comptroller General
of the United States

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