

DECISION

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

FILE: B-183468

DATE: JUL 28 1976

MATTER OF: Gilbert C. Morgan - Claim for mileage
and per diem61222
98802

DIGEST:

1. Agency may issue regulations limiting the mileage allowable to an employee traveling to and from his residence where his residence is outside the limits of his headquarters to the distance between the origin or destination of his trip and a point not exceeding 25 miles from the corporate limits of his official duty station measured in the direction of his residence (25-mile point). However, where employee maintains residence at headquarters from which he commutes daily to work and another residence 103 miles away which he visits on weekends, when traveling from airport after official trip, he is entitled to mileage from airport to residence at headquarters.
2. Employee, who traveled to temporary duty station (TDS) which was within commuting distance from his office, was not entitled to per diem but may be allowed mileage between the TDS and his official station.
3. Employee who traveled from his residence to his office, and then on the following day traveled to a temporary duty station (TDS), may be allowed mileage from his office to the TDS.

This decision is in response to a request dated March 3, 1975, by June S. Long, certifying officer of the Federal Home Loan Bank Board (FHLBB) for an advance decision concerning several claims for travel expenses by Gilbert C. Morgan, an FHLBB employee.

The information furnished shows that Mr. Morgan, whose duty station is in Oklahoma City, Oklahoma, elected to retain his residence in Ponca City, Oklahoma, after his transfer to Oklahoma City. Ponca City is approximately 103 miles north of Oklahoma City, and has been informally ascertained that Mr. Morgan claims that he

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maintained a residence in Oklahoma City during the week from which he commuted to work and that he visited Ponca City on weekends. Mr. Morgan is a Savings and Loan Examiner whose duty is to make periodic examinations of all federally insured savings and loan associations and all members of the Federal Home Loan Bank System. The Savings and Loan Examiners are in a travel status up to 80 percent of the time.

The voucher submitted by Mr. Morgan indicates that on Friday, September 27, 1974, he arrived at the Oklahoma City Airport en route to his residence from a temporary duty trip. He traveled by privately owned automobile from the airport to his residence in Ponca City, 103 miles north of his official duty station, Oklahoma City. He claims 62 miles of reimbursable mileage for this trip.

On Monday, September 30, 1974, Mr. Morgan departed from his residence and arrived in Oklahoma City for office duty at 9 a.m. At 3:15 p.m. he departed from Oklahoma City and arrived at Norman, Oklahoma, to conduct interviews. On October 1 and 2, 1974, he apparently stayed overnight in Norman. On October 3, 1974, he departed Norman and arrived in Oklahoma City at 8 a.m. for office duty. On Friday, October 4, 1974, he departed Oklahoma City at 3:30 p.m. and arrived at Ponca City at 6 p.m. The employee claims 49 miles each for the trips between his office and residence on Monday, September 30, 1974, in reporting to work from his home, and Friday, October 4, 1974, in returning home from work. He also claims per diem for the period of his temporary duty in Norman for the period September 30 to October 2, 1974.

On Tuesday, October 15, 1974, the employee departed his residence and reported for work at 9 a.m. at his headquarters in Oklahoma City. That following afternoon, October 16, 1974, at 3:30 p.m., he departed his headquarters for temporary duty at Lawton, Oklahoma. On Friday, October 18, 1974, he departed Lawton and returned to Ponca City. He claims 49 miles for travel from that residence to his office on October 15, 1974, and 96 miles from Lawton to that residence on October 18, 1974.

FHLBB Travel Policy Memorandum A-312, at page 3, effective February 1, 1970, defines "official station" as the employee's "residence if within the designated official station or a point not exceeding 25 miles from the corporate limit of the designated official

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station nearest [the employee's] * * * residence." As a result of this definition, the agency computes the mileage entitlement of an employee who does not maintain a residence within the designated official duty station by measuring the distance between the destination or origin of the trip and a point 25 miles from the corporate limits of the city in the direction of the employee's residence (hereinafter "25-mile point").

Decisions of this Office have held that:

"* * * the matter of authorizing mileage to an employee for the use of his automobile in connection with official travel is discretionary with the agency in which he is employed." 52 Comp. Gen. 448, 451 (1973); B-175608, June 19, 1972.

Thus the agency has authority to restrict mileage payments in consideration of the interests of both the employee and the Government. B-175608, December 18, 1973. The FHLBB restriction of mileage while traveling on official business to or from an employee's residence to 25 miles from the designated official duty station is within the agency's discretion to limit mileage payment. It allows the employee some mileage for a trip to or from his residence while eliminating any extra expense to the Government caused by the employee's decision to live further than normal commuting distance from his designated official station. Accordingly, the "25-mile point" rule adopted by the FHLBB may be applied to the facts presented to us by the certifying officer.

The certifying officer has submitted several questions concerning the employee's travel allowances and they will be answered in the order presented.

"1. Upon return to Oklahoma City airport, wouldn't the mileage allowable be that actually driven from the airport to the twenty-five-mile point from the nearest corporate limit of official duty station to residence, or a distance of approximately 48 miles (10 miles from the airport to the center of the city, 13 miles from the center of city to the outer corporate limits and from the

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corporate limits to the twenty-five-mile point allowed if residing outside municipality of official duty station.)?

The first question posed to us by the certifying officer is what mileage was allowable when the employee traveled returning from temporary duty from the airport to his residence on Friday, September 27, 1974. An employee's residence is that place from which he ordinarily commutes to work each day. Since the record shows that the employee maintained a residence in Oklahoma City, i. e., he ordinarily traveled to his official duty station from that location, he would be entitled to reimbursement for mileage from the airport to his residence in Oklahoma City. Any further travel to Ponca City would be personal.

The certifying officer's second question asks what mileage would be allowable if the employee were assigned to a temporary duty station and the most direct and usually traveled route from his official duty station to the temporary duty station would take him through his place of residence. The authority of this Office to issue advance decisions to certifying officers pursuant to 31 U. S. C. § 82d is limited to questions involved in specific vouchers presented to us for certification. There is no authority under that section for a certifying officer to present or to obtain a decision on a general question not involved in the particular voucher before the certifying officer for certification. 26 Comp. Gen. 797, 799 (1947); 24 id. 546, 548 (1945). Consequently, since the second question presented to us is not involved in the voucher submitted to us, this Office cannot undertake to render a decision with respect to the matter on the basis of the request as presented.

"3. Based on Agency regulations defining commuting trips and per diem, and since the traveler does not give the address of his temporary residence, if any, in Oklahoma City: (a) Would the traveler be entitled to mileage from office in Oklahoma City to Norman, Oklahoma, and return to the temporary residence in Oklahoma City, plus the allowable per diem for the period September 30-October 2, or, (b) Would he be entitled to allowable per diem and mileage from Norman to the twenty-five-mile point on his

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return on September 30, and for round-trip costs and allowable per diem for such travel on October 1 and 2?"

The certifying officer's third question asks what per diem the employee was entitled to during the period from September 30 through October 2, 1974, when he was at a temporary duty post in Norman. The general statutory authority for a per diem allowance is 5 U.S.C. § 5702 (1970) which provides in pertinent part that "an employee, while traveling on official business away from his designated post of duty, is entitled to a per diem allowance prescribed by the agency concerned." The Federal Travel Regulations (FPMR 101-7) para. 1-7.3a (May 1973), which implement the statute, state in pertinent part that "It is the responsibility of each department and agency to authorize only such per diem allowances as are justified by the circumstances affecting the travel." Thus, there is no requirement that per diem in lieu of subsistence must be administratively authorized upon assignment to a temporary duty station. See B-182728, February 18, 1975. Our Office has recognized that agencies generally have the authority and the responsibility to restrict payment of per diem upon a reasonable basis, such as the distance to the temporary duty station.

The FHLBB has expressed its policy towards per diem allowances in FHLBB Policy Memorandum A-312. That memorandum, at page 3, defines the "normal commuting distance" as:

"a distance not in excess of 40 miles from the nearest corporate limit of the designated official station or residence, whichever is nearest the temporary duty station."

Full per diem is not allowed for travel within the 25 to 40 mile commuting area of the official duty station except when approved by the Chief Examiner.

In the present case the distance from the "designated official station," Oklahoma City, to the temporary duty station, Norman, was less than 40 miles (21 miles). Consequently, the employee was within "normal commuting distance" of the temporary duty station.

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Furthermore, the agency's discretion in allowing per diem is limited by FTR para. 1-7.6d(1) which provides that:

"* * * per diem shall not be allowed when the travel period is 10 hours or less during the same calendar day, except when the travel period is 6 hours or more and begins before 6 a.m. or terminates after 8 p.m.* * *"

In the present case, there is no indication that the employee's travel either took more than 10 hours or that the employee, had he commuted as he was supposed to, would have been required to return to his office after 8 p.m. Thus, it does not appear that per diem could have been allowed in this case even if the FHLBB Travel Policy Memorandum did not prohibit it.

The certifying officer's third question also asks what mileage the employee would be entitled to for the period from Monday, September 30, through Wednesday, October 2, 1974.

Generally, an employee must bear the expense of travel between his residence and his official duty station. 36 Comp. Gen. 450, 453 (1956); B-171969.42, January 9, 1976. Mileage may be allowed in certain instances of travel between an employee's residence and his office. Subparagraph 1-4.2c(2) of the FTR provides that:

"(2) Round trip when in lieu of taxicab between residence and office on day of travel. In lieu of the use of taxicab under 1-2.3d, payment on a mileage basis at the rate of 15 cents per mile and other allowable costs as set forth in 1-4.1c shall be allowed for round-trip mileage of a privately owned automobile used by an employee going from his residence to his place of business or returning from place of business to residence on a day travel is performed. However, the amount of reimbursement for the round trip shall not exceed the taxicab fare, including tip, allowable under 1-2.3d for a one-way trip between the points involved."

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Subparagraph 1-2. 3d of the FTR pertaining to local transportation provides that:

"d. Between residence and office on day travel is performed. Reimbursement may be authorized or approved for the usual taxicab fares, plus tip, from the employee's home to his office on the day he departs from his office on an official trip requiring at least 1 night's lodging and from his office to his home on the day he returns to his office from the trip, in addition to taxi fares for travel between office and carrier terminal."

In the present case, the employee traveled, on September 30, 1974, from Ponca City to his official duty station and worked in his office until 3:15 p.m. then, on the same day, traveled to a temporary duty station at Norman. However, since the trip to the temporary duty station was a "commuting trip," as explained above, it did not require at least one night's lodging and, thus, does not qualify for the exception contained in para. 1-2. 3d of the FTR to the general rule that an employee must bear the expense of travel between his residence and his office. Thus, the employee is not entitled to mileage for the portion of the trip from his residence to his office on September 30, 1974.

Even though the leg of the trip from the employee's office to his temporary duty station is defined by the FHLBB Travel Policy Memorandum A-312, at page 2, as a "commuting trip," nothing contained in that memorandum implies that mileage shall not be allowed for such a trip. An agency may authorize or approve mileage for official travel close to or even within the limits of the official duty station, except for travel from the employee's residence to his official headquarters. See 46 Comp. Gen. 718 (1967); 36 Comp. Gen. 795 (1957); B-175608, June 19, 1972. Accordingly, the employee may be reimbursed mileage for the trip from his office to his temporary duty station at Norman on September 30, 1974, and return to his office on October 3, 1974.

"4. If the traveler should have commuted on October 1-2, would any mileage be allowed on October 3 and 4, since he was performing duties at the office in Oklahoma City those days?"

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See answer to question number 3 for return to office on October 3. However, as to October 4, which apparently involved no official travel, no mileage is allowable.

"5. On October 15, he is returning to Oklahoma City for regular duty, rather than reporting to Lawton, Oklahoma. Would there be any mileage claim allowed based on the same question asked in number 4?"

The voucher shows he traveled from Ponca City to his office on October 15, 1974, and, on the afternoon of October 16, 1974, he commenced travel at 3:30 p.m. to a temporary duty station at Lawton, Oklahoma, arriving at 5:45 p.m. Since an employee is not entitled to reimbursement for travel costs from his residence to his headquarters he is not entitled to reimbursement of mileage on October 15. See 46 Comp. Gen. 718 (1967). However, for the travel to Lawton on October 16, he is entitled to mileage.

"6. On October 18, would the mileage allowed be the miles driven from Lawton, Oklahoma, to the twenty-five-mile point?"

The certifying officer's sixth question asks what mileage would be allowable when the employee returned to Ponca City from his temporary duty station in Lawton on October 18, 1974. The allowable mileage would be the distance from Lawton to the employee's headquarters where he maintained a residence.

Action on the voucher should be taken in accordance with the foregoing.

R. F. Keller

Deputy, Comptroller General
" of the United States