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DECISION



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

FILE: B-186078

DATE: October 12, 1976

MATTER OF: Norma J. Kephart--Claim for actual subsistence expenses while on temporary duty

DIGEST: Employee was authorized actual subsistence expenses for temporary duty assignments in Oakland, California, lasting nearly 2 months. Employee obtained lodgings at monthly rate and apparently at a significant savings over daily rate, but employee submitted claim for daily expenses at or near maximum rate since she spent exorbitant amounts for meals. Employee is entitled to reimbursement for only reasonable expenses for meals since traveler is required to act prudently in incurring expenses. Employing agency shall determine what constitutes reasonable expenses for meals under the circumstances.

This action is in response to the request for an advance decision from P. Cooper, a disbursing officer of the Navy Regional Finance Center, Department of the Navy, San Diego, California, reference M/RHP:tez, regarding payment of the claim of Ms. Norma J. Kephart, an employee of the Department of the Navy, for actual subsistence expenses incurred while on temporary duty.

The record indicates that Ms. Kephart, who was stationed at San Diego, California, was directed to perform temporary duty in Oakland, California, from September 28 to October 31, 1975, and from November 2 to November 21, 1975. Since Oakland is considered a high cost area under the appropriate travel regulations, Ms. Kephart was authorized reimbursement for her actual subsistence expenses not to exceed a maximum daily amount of \$39. The employee was able to obtain a monthly rate of \$225 for her hotel accommodations, so that her average daily lodging costs for the period September 29-October 29 was \$7.50 and for the period October 30-November 22 was \$9.38. The record indicates further, however, that Ms. Kephart claims \$4 per day for miscellaneous expenses for dry cleaning and tips and an average of approximately \$23-\$24 per day for her three meals. Her claim for actual expenses ranged from \$34.50 to the maximum \$39 during her period of temporary duty. Ms. Kephart submitted the following statement in support of her claim:

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"I was not informed there was a limit to the amount to be spent on food so therefore I took advantage of going to the nicest places in the San Francisco area to which I cannot afford to go on my salary."

The disbursing officer questions the propriety of paying the claim in view of the requirement that reimbursement be made only for actual and necessary subsistence expenses incurred and in view of the requirement that a traveler on official business exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business.

Section 5702 (c) of title 5, United States Code, provides that, in accordance with regulations prescribed by the Administrator of General Services, an employee may be reimbursed for the actual and necessary expenses of official travel when the per diem is determined to be inadequate for travel to high rate geographical areas. The implementing regulations, which appear in the Federal Travel Regulations (FPMR 101-7) (May 1973) as amended, provide, in para. 1-8.1.b (FPMR Temp. Reg. A-11, issued June 27, 1975), that actual subsistence expense reimbursement shall normally be authorized or approved for temporary duty travel to a high rate geographical area (with certain exceptions within the discretion of the agency), and it was so authorized in the present case in accordance with the applicable provisions of Volume 2 of the Joint Travel Regulations (JTR), para. C8151 (Change 118, 8/1/75). The provisions in both the FTR and JTR allow for reimbursement of the "actual and necessary" subsistence expenses. In addition, the FTR provides, in para. 1-1.3:

"a. Employee's obligation. An employee traveling on official business is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business.

"b. Reimbursable expenses. Traveling expenses which will be reimbursed are confined to those expenses essential to the transacting of the official business."

See also 2 JTR para. C1051.

We note that the employee, anticipating a lengthy period of temporary duty, arranged for lodging at a monthly rate of \$225.

While the figures are not before us with regard to the hotel's daily rate, we presume the Government realized a savings over the daily rate, and we conclude that the employee acted prudently in this regard. See B-183341, May 13, 1975. However, it appears that Ms. Kephart's claims for actual subsistence expenses other than for lodgings were not reasonable and do not reflect prudent conduct on her part. It seems clear that reimbursement for actual subsistence expenses in high rate areas was intended to compensate the traveler for the higher expenses usually incurred while traveling in the large metropolitan areas, and not to allow an employee who realizes a savings in one area of subsistence (e.g., lodgings) to claim the maximum reimbursable amount (or nearly that amount) with extravagant expenditures for meals. We have held that an employee may not be paid the maximum per diem where lodgings were provided by the employee's relatives since it is not reasonable to conclude that the costs to the relatives are comparable to commercial facilities. B-184946, March 10, 1976. We have similarly denied claims for temporary quarters subsistence expenses pursuant to a change of official duty station where the employees claimed unreasonable expenses for room and board while occupying temporary quarters owned by a relative. 52 Comp. Gen. 78 (1972); B-183583, February 2, 1976; and B-182135, November 7, 1974. Finally, our Office has held in 55 Comp. Gen. 1107 (1976) that expenditures in excess of \$900 for food items in a 30-day period claimed as a temporary quarters subsistence expenses are unreasonable in view of Department of Labor statistics regarding average family budgets and are not allowable absent additional evidence that they were justified.

In the present case, the claims of Ms. Kephart were returned to her by the Navy Regional Finance Center for a statement of "reasonable costs," but Ms. Kephart declined to revise her actual cost to "reasonable costs." It also appears that the employing agency has not made a determination as to the reasonableness of these expenses. Where the agency has exercised that responsibility, our Office will not substitute our judgment for that of the agency absent evidence that the agency's determination was clearly erroneous, arbitrary, or capricious. At the same time we reserve the right and duty to make an independent determination as to the reasonableness of the expenses claimed. In the cases before us, we find that the employee's claims should be returned to the employing agency for a determination by that agency as to what constitutes a reasonable expense for meals and miscellaneous expenses. The determination should be made on the basis of the facts in this case with, perhaps, guidance from the experiences

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of other travelers to the Oakland-San Francisco area. With regard to the employee's statement that she was not aware of the necessity to limit her expenditures for meals; we note that all employees are charged with the knowledge of applicable laws and regulations. See B-184766, June 25, 1976, and cases cited therein.

As cited above, the FTR provides that employees traveling to high rate areas shall normally be authorized reimbursement for actual subsistence expenses, but, in the discretion of the agency, a fixed per diem rate may be authorized under certain conditions. FTR para. 1-8.1.b. In this regard, the JTR has been amended subsequent to Ms. Kephart's travel to allow for a fixed per diem rate (when approved in advance of the travel) where there will be known reductions in lodging and/or meal costs. See 2 JTR para. C4600-1.b (Change 131, 9/1/76). Consideration should be given to this provision in the future when travel is scheduled under the circumstances present in this case and where a reduced rate for lodging is known in advance. Further, the employing agency should consider its authority under FTR para. 1-8.3.b which would allow the agency to issue written guidelines to serve as a basis for review of an employee's expenses. Such review would determine whether the expenses claimed are allowable subsistence expenses and were necessarily incurred. These guidelines, if brought to the employee's attention in advance, could provide guidance for employees who are able to obtain lodgings and/or meals at substantial savings but where a fixed per diem could not be established in advance of travel.

Finally, we note that in accordance with our decision B-183341, supra, Ms. Kephart should be reimbursed on the basis of dividing the total lodging expenses by the number of days the employee utilized the lodgings. Thus, since Ms. Kephart returned to her official duty station from October 31 to November 2, it appears that she may properly claim lodging for 54 nights, from September 28 through October 30 and from November 2 through November 22.

Accordingly, action on the voucher, returned herewith, should be taken in accordance with the above.


Deputy Comptroller General
of the United States