

4465

04096

Lupton
C.P.

DECISION



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

FILE: B-188365

DATE: November 16, 1977

MATTER OF: Ernest E. Gray - Temporary Quarters Subsistence Allowance Dual Rate Reimbursement Limitation

DIGEST: Navy employee transferred from Guam, to San Diego, California, moved into temporary quarters on Guam, at a temporary quarters maintenance allowance based on \$49 per day, prior to travel to San Diego where he moved into temporary quarters with allowance based on \$35 per day. Employee erroneously contends that Joint Travel Regulations (JTR) provide that initial allowance rate should be utilized to compute his allowance regardless where temporary quarters are located. However, Navy correctly interpreted JTR by establishing dual allowance rates of \$49 for Guam and \$35 for San Diego.

This action is in response to letters dated November 22, 1976, file symbol MT:GA:tez, from the Central Disbursing Officer, Navy Regional Finance Center, San Diego, requesting an advance decision on a reclaim voucher submitted by Mr. Ernest E. Gray, a civilian employee of the United States Navy, for temporary quarters subsistence expenses he incurred while in temporary quarters at San Diego, California.

Mr. Gray performed permanent change of station travel from Guam to San Diego, California, under permanent change of station orders which authorized a temporary quarters subsistence allowance for 60 days. While at Guam, the employee and his dependents vacated their permanent residence and occupied temporary quarters on November 6, 1975, and remained there until November 17, 1975, when they departed for the continental United States. They arrived in San Diego on the same date and immediately occupied temporary quarters, where they remained until permanent quarters were occupied on January 17, 1976.

Payment to Mr. Gray for temporary quarters subsistence expenses covering the first 10-day period of November 6-15, 1975, was limited to 75 percent of the \$49 per diem rate authorized for Guam. For the first 2 days, November 16-17, 1975, of the second 10-day period,

B-188365

payment was limited to two-thirds of the daily rate for the first 10-day period. For the last 8 days, November 18-25, 1975, of the second 10-day period, payment to Mr. Gray was limited to two-thirds of \$35, the per diem rate authorized for the continental United States. For the third and subsequent 10-day periods, payment to the employee was limited to one-half of \$35.

Mr. Gray has submitted a claim voucher requesting payment for the difference between the amount he was paid and the amount he would have been paid had the \$49 per diem rate authorized for Guam have been the limitation for the entire period. The employee contends that the higher per diem rate is authorized under the provisions of para. C13005-2, Volume 2 (Change 131, Sept. 1, 1976-- prior citation was C8255.2), Joint Travel Regulations (JTR) which reads as follows:

"2. REIMBURSEMENT LIMITATION

"a. General. When in the same household, an employee's spouse or other dependent also is an employee, eligibility for temporary quarters subsistence expenses allowance will be limited to that for an employee with dependents. Separate entitlement will not be allowed for each as an employee. The amount which may be reimbursed will be the lesser of either the actual amount of allowable expenses incurred for each 10-day period or the amount allowable in accordance with the periods covered in subpars. b through d.

"b. First 10 Days

"For the employee—a daily rate not in excess of 75% of the maximum applicable per diem rate authorized under par. C4551.

"For each dependent—a daily rate of two-thirds of the rate established for the employee.

"c. Second 10 Days

"For the employee—a daily rate of two-thirds of the rate established for the first 10 days.

B-188365

"For each dependent—a daily rate of two-thirds of the rate established for dependents for the first 10 days.

"d. Third 10 Days and Any Portion of the Additional 30-day Period

"For the employee—one-half of the rate established for the employee for the first 10 days.

"For each dependent—a daily rate of one-half of the rate established for dependents for the first 10 days."

Mr. Gray maintains that since the \$49 rate was established for the first 10-day period, that is the rate referred to in the literal language of subpara. C13005-2(c) and (d) above, to the exclusion of all others. We do not agree. For if Mr. Gray's interpretation were correct, these regulations would be inconsistent with 5 U.S.C. § 5724a, the statute which these regulations implement. That statute provides that temporary quarters subsistence expenses shall not be authorized in excess of the maximum per diem rate prescribed by or under 5 U.S.C. § 5702, which established a per diem rate not to exceed \$35 for travel inside the continental United States. That limitation was set forth in 2 JTR para. C4551-1, which was incorporated by reference in 2 JTR subpara. C13005-2b. Therefore, to be consistent with the statute on which it is based, subpara. C13005-2b must be read as requiring an agency to establish two separate temporary quarters subsistence allowance rates for the first 10-day period, when a permanent change of station involves temporary quarters inside and outside the continental United States.

The Navy Regional Finance Center, San Diego, correctly interpreted the provision of 2 JTR para. C13005-2b, in Mr. Gray's case as requiring the establishment of two temporary quarters subsistence rates of \$49 for Guam and \$35 for San Diego. We find additional support for that interpretation in the Federal Travel Regulations (FPMR 101-7) (May 1973) contained in para. 2-5.4c(1)(a) which reads as follows:

"(1) For the first 10 days.

"(a) For the employee, a daily rate not in excess of 75 percent of the maximum statutory per diem rate for the locality in which temporary quarters are located * * *."

B-188365

The above-quoted regulation requires that the temporary quarters subsistence allowance be based on the per diem rate for the locality of the temporary quarters. Thus, the regulations contemplate that the allowance may change for temporary quarters located in different areas.

Accordingly, payment of Mr. Gray's claim is not authorized and the voucher in this case will be retained in this Office.


Deputy Comptroller General
of the United States