

Wilcox
C.P.

DECISION



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

4628

FILE: B-189800

DATE: December 29, 1977

MATTER OF: J. William Laude - Actual subsistence expenses

- DIGEST:**
1. Employee may not be paid actual subsistence expenses based on payment of \$19 per night for lodgings at the home of his aunt while on temporary duty, notwithstanding assertion that the \$19 amount is less than motel rates. In accordance with 55 Comp. Gen. 856 (1976), amounts reimbursable for lodging with friends or relatives must be reasonable and must reflect additional expenses incurred by host as result of employee's stay.
 2. Employee on temporary duty notified on Friday afternoon that he was to meet with supervisor at his permanent duty station on Tuesday, the next workday following a Monday holiday, may not be paid per diem in connection with his delay in initiation of travel over the intervening 3-day weekend in order to travel during regular duty hours on Tuesday, in view of the 2-day per diem rule recently clarified in B-180024, August 1, 1977, 55 Comp. Gen. __.

We have before us separate requests for advance decisions submitted by Helen H. Ogata, a certifying officer, and Bennie Addison, Jr., Chief, Financial Accounting Section, for the Internal Revenue Service, Department of the Treasury. Both decision requests concern travel claims submitted by Mr. J. William Laude and involve the common issue of the amount of his actual subsistence expense entitlement while staying with an aunt incident to temporary duty assignments in Los Angeles, California. The decision request submitted by Mr. Addison raises an additional question concerning payment of actual subsistence expenses for 3 nonworkdays over which Mr. Laude delayed return travel from Los Angeles to his permanent duty station in San Francisco, California.

B-129800

The matter raised by the certifying officer, Ms. Ogata, involves the fact that while assigned to temporary duty in Los Angeles, a high-cost area subject to actual subsistence expense reimbursement, Mr. Laude stayed with his aunt for 31 days during the periods from August 4 through August 29, 1975, and from September 3 through September 29, 1975. For those days he claims actual subsistence expenses based on his actual expenditures for meals and \$19 per day for lodgings paid to his aunt. His claim for reimbursement of those lodgings costs is supported by copies of cancelled checks and receipts from his aunt. The checks, in the amounts of \$300 and \$285, respectively, were not drawn until May 24 and August 4, 1976. The May 1976 check bears the notation that it is for lodgings furnished on 16 specific dates in August of 1975, while the August 1976 check bears the notation that it is in payment for lodgings furnished on 15 specific dates in September of 1975. The checks are acknowledged by receipts signed by Mr. Laude's aunt dated June 1, 1976, and August 1976, respectively.

The above claims were disallowed in accordance with 55 Comp. Gen. 856 (1976) wherein we held that the claimant could not be paid a per diem allowance based on the \$14 daily amount paid for lodgings in noncommercial lodgings provided by friends or relatives in the absence of a showing that the amount claimed was reasonable and based on additional expenses incurred by the host as a result of the employee's stay. That decision adopted for purposes of application to per diem claims the principles established by 52 Comp. Gen. 78 (1972) for temporary quarters subsistence expenses claimed for lodgings provided by friends or relatives. While recognizing that charges for temporary quarters supplied by friends or relatives may be reimbursed where reasonable in amount, 52 Comp. Gen. 78 defines the requirement of reasonableness in terms of an amount "considerably less than motel charges" and requires a correlation between the amount paid by the employee for such noncommercial lodgings and the additional costs actually incurred by the host to provide such lodgings.

Mr. Laude questions application of 55 Comp. Gen. 856 to his case and suggests that the only condition for reimbursement of an amount paid to a friend or relative for lodgings is that the amount claimed be reasonable. Consistent with this view he asserts that the amount of \$19 per night paid to his aunt was reasonable. In this regard he states:

B-189800

"* * * While in Los Angeles, I stayed at non-commercial lodging (my aunt's). I paid my aunt the rate of \$18 per night. This was significantly less than 'government rates' as high as \$25 per night at the Hyatt Regency. The maximum allowable rate for lodging under the 'actual expense' allowance was \$25 per night. My overall average daily expenses on the vouchers was \$30 per day compared to a maximum allowable at \$37 per day.

* * * * *

"First, I do not feel that 'reasonable' lodging rates can be determined by a formula or that 'reasonable' rates are directly related to additional expenses of the person providing such lodging. Rather, 'reasonable' rates are subjective and can best be determined by market comparison studies. Certainly, market comparison studies would suggest that comparative motel rates are a better gauge than additional expenses."

The suggestion posed by Mr. Laude that the yardstick of whether amounts paid to friends or relatives for noncommercial lodgings is reasonable should be a comparison with motel rates was specifically addressed and rejected in Matter of Barry A. Smith, B-184946, March 10, 1976, as follows:

"Regardless of whether noncommercial lodgings with a friend or relative are secured in connection with a permanent change of station or a temporary duty assignment, we do not consider it necessary for an employee to pay the same amount for those lodgings that he would be required to pay for accommodations at a motel or other commercial establishment. In this regard, we are unable to agree with Mr. Smith's argument that the types of expenses incurred by one who provides lodgings in his private home to a friend or relative are the same as those incurred by a commercial establishment. In general, the expenses incurred by an individual in accommodating a friend or relative

E-189800

in his private home are similar to those he incurs in maintaining that home for his and his family's use. The presence of a guest would increase his use of utilities and household furnishings. However, the host would not incur certain expenses that a commercial establishment would incur, such as license fees, salaries of reservation personnel, advertising, etc. Therefore, while we recognize that a private host is put to some inconvenience in furnishing lodgings to a friend or relative and incurs some additional expenses, we are unable to agree with Mr. Smith's view that the cost of commercial lodgings reflects a fair standard of compensation."

Aside from the contention that his lodging costs should be allowed as reasonable based on a comparison with motel rates, Mr. Laude suggests that the circumstances dictating disallowance of the claims considered in 55 Comp. Gen. 856 and 52 Comp. Gen. 78 are distinguishable from his case in that the claimants in those cases paid for noncommercial lodgings at rates that were either determined in order to qualify for reimbursement of the maximum allowable or in excess of rates charged at available commercial facilities. He states that the circumstances of his case are more akin to those involved in Matter of Nancy L. Johnson, B-175787, April 22, 1975. In light of the requirement of 55 Comp. Gen. 856 for support of a determination of reasonableness of amounts paid for lodgings with friends or relatives, that the amounts reflect actual costs incurred by the host as a result of the employee's stay, we are unable to agree that the distinction urged by Mr. Laude is relevant. With respect to the Nancy L. Johnson case, we note that while that decision postdated 52 Comp. Gen. 78, applicable to temporary quarters subsistence expenses reimbursement, it predated our holding in 55 Comp. Gen. 856 which extended the principles enunciated in 52 Comp. Gen. 78 to per diem claims. The latter decision overrules the Nancy L. Johnson case insofar as it applies a standard of reasonableness unrelated to expenses actually incurred by the host as a result of the employee's stay.

In accordance with the above discussion, the administrative disallowance of Mr. Laude's claim is sustained.

B-189800

The decision request submitted by Bernie Addison, Jr., in part concerns Mr. Laude's claim for lodging costs incurred in Los Angeles while staying with a relative, presumably his aunt, and is for disallowance in accordance with the foregoing discussion.

The additional matter raised by Mr. Addison involves Mr. Laude's claim for per diem for Saturday, Sunday, and a Monday holiday falling on October 23, 24, and 25, 1976. At 3 p.m. Friday, October 22, 1976, Mr. Laude, who was then on temporary duty in Los Angeles, was advised that his supervisor would like to talk with him at his permanent duty station in San Francisco on the next workday. Rather than returning to his permanent duty station on Friday afternoon or evening, Mr. Laude delayed his return to San Francisco until the following Tuesday, departing Los Angeles at 11 a.m. and arriving in San Francisco at 12:15 p.m. on October 26, 1976. The explanation offered by Mr. Laude for this delay in returning to his official duty station on Friday is that the Los Angeles airport is crowded on Friday afternoon, traffic is heavy and he was unable to obtain confirmed reservations at that late period of the day.

Mr. Laude's claim for per diem for the 3-day weekend of October 23 through 25, 1976, was disallowed on the basis that he unduly delayed his return travel to San Francisco and that his per diem entitlement was, therefore, in a suspended status from midnight Friday until midnight Monday. His claim for the per diem administratively disallowed is supported by Mr. Laude's argument that under 5 U.S.C. § 6101(b)(2), an employee is not required to perform travel outside his regular duty hours and that he, therefore, properly delayed his return travel until during regular duty hours of the next workday.

While Mr. Laude properly relies on 5 U.S.C. § 6101(b)(2) for the general proposition that, to the maximum extent practicable, an employee's travel should be scheduled during regular duty hours, the policy set forth by that section is subject to the "2-day per diem rate" set forth in our decision 55 Comp. Gen. 590 (1975) and 53 Comp. Gen. 862 (1974), and more recently clarified in Matter of Two-day per diem rule, B-180084, August 1, 1977, 56 Comp. Gen. . . . As explained in the latest of those decisions, the 2-day per diem rule permits payment of up to but not including 2 days per diem to enable an employee to travel during regular duty hours:

B-189800

"As the Committee suggests, the 2-day per diem rule stated in those decisions, in authorizing payment of up to but not including 2 days' additional per diem for the purpose of enabling an employee to travel during regular duty hours, is intended to preclude delays over weekends or over the 2 consecutive days that an employee is otherwise not scheduled to be on duty.

"The Committee's first specific question relates to the per diem payable in the case where an employee delays his travel for an unreasonably long period, as from Friday to Monday. We are asked what per diem, if any, would be payable for the intervening Saturday and Sunday. We believe that question is answered in 46 Comp. Gen. 425 and in 55 Comp. Gen. 590. In 46 Comp. Gen. 425 we held, with respect to an employee who had delayed his return travel from Friday to Monday, that no additional per diem was payable by reason of his failure to return to headquarters on the weekend, and that his per diem entitlement was limited to the amount otherwise payable if the return travel had been performed after completion of temporary duty on Friday without interruption. Similarly, in 55 Comp. Gen. 590 we held that additional per diem costs attributable to the employee's election to travel 3 days in advance may not be paid."

With respect to travel involving delay or acceleration of departure over a 3-day weekend including a Monday holiday, see specifically 55 Comp. Gen. 590 (1975).

Inasmuch as the certifying officer does not address the matter, we assume that the agency does not question Mr. Laude's statement that he was unable to obtain reservations for return travel Friday afternoon or evening. Under these circumstances, he should, nevertheless, have proceeded the following morning, as any further delay in initiation of travel until almost noon of Tuesday, the next workday, would involve payment of more than 2 days additional subsistence expenses. We, therefore, agree with the administrative finding that Mr. Laude is not entitled to

B-189800

subsistence expenses for the period during which he delayed his return. However, in accordance with example discussed in B-180084, supra, and given that flight reservations could not be obtained Friday afternoon or evening, his per diem entitlement should be suspended on the basis of a reasonable departure time Saturday morning rather than Friday evening.

W. K. Man
Acting Comptroller General
of the United States