

Putnam
C.P.

DECISION



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

04650

FILE: B-189731

DATE: January 3, 1978

**MATTER OF: Jon C. Geist - Per Diem - Temporary Duty
Near Headquarters**

DIGEST: Civilian employee of National Bureau of Standards whose official station was in Gaithersburg, Maryland, incurred subsistence and lodging expenses while performing official business in Alexandria, Virginia, approximately 40 miles from official station. Where employee's duty required his presence during such hours as to render daily travel between temporary station and residence impracticable, thus putting him to greater subsistence expense than ordinarily incurred at headquarters, employee was properly authorized a per diem allowance and his claim may be paid.

Ms. Emma Axline, an authorized certifying officer, National Bureau of Standards (NBS), United States Department of Commerce, by letter dated July 20, 1977, with enclosures, requested our advance decision as to whether she may properly certify for payment a voucher submitted by Mr. Jon C. Geist, an employee of the agency, for reimbursement of meals, lodging, and telephone calls incurred by him while on temporary duty in Alexandria, Virginia, from January 23 through 27, 1977.

The facts upon which the claim is based are as follows: By Travel Order No. W71633 approved January 19, 1977, Mr. Geist, a physicist, was authorized a per diem allowance, estimated to be \$210, for expenses to be incurred while serving on an evaluation panel to review a proposal for Space Lab 2 and the Orbital Flight Test Mission. Mr. Geist resides in Olney, Maryland; his official duty station is Gaithersburg, Maryland; and the panel meeting was held in Alexandria, Virginia. Inasmuch as the panel was scheduled to convene early in the mornings and to continue until late in the evenings, the travel order authorized per diem on the basis that it would be very inconvenient to drive back and forth every day.

Agency officials advise us that it would have been an unnecessary inconvenience and an imposition on the employee

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to require him to commute about 40 miles each way at such hours while on official business. Of even greater importance, it was felt that the success of such an evaluation panel, and the effectiveness of the NBS contribution, depended strongly on the close eating and lodging environment of all the panel members. Mr. Geist incurred expenses totaling \$150.26 representing costs of meals, lodging, and telephone calls during the period in question. No privately owned vehicle mileage was authorized or claimed.

The certifying officer states that doubt exists as to whether the voucher may be certified for payment since the claimed expenses were apparently incurred at the headquarters of the employee. She cites our decision, Matter of Albert F. Petrillo, B-182586, December 17, 1974. In Petrillo, we held that an employee who incurred subsistence and lodging expenses at his headquarters incident to his attendance at a meeting representing his agency, was not entitled to reimbursement therefor, notwithstanding the fact that such expenses were incurred at the direction of Government officials. This Office has consistently held that, in the absence of specific statutory authority, an employee is not entitled to subsistence at headquarters, regardless of unusual working conditions, and that the Government is neither estopped nor bound by the unauthorized acts of its agents.

However, our decision in Petrillo is not applicable to the case at bar. Here, Mr. Geist's official duty station was in Gaithersburg, Maryland, and he performed temporary duty at the meetings of the evaluation panel in Alexandria, Virginia. In this connection, the Federal Travel Regulations (FTR), FPMR 101-7 (May 1, 1973), section 1-1.3c(1) provides, in pertinent part, as follows:

"Official station and post of duty. Designated post of duty and official station mean the same. The limits of the official station will be the corporate limits of the city or town in which the officer or employee is stationed. * * *"

The United States Civil Service Commission has promulgated a similar definition which may be found in the Federal Personnel Manual (FPM) Supplement 990-2, Book 550, subchapter S1-3. Temporary duty has been interpreted to denote work performed in a travel status and, therefore, necessarily involves the travel of an employee away from his official station. 21 Comp. Gen. 591 (1941).

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In other decisions of this Office, we have disallowed payment of per diem allowances to employees for periods of official duty within short distances of the corporate limits of their official stations, based upon the theory that the duty was performed substantially at headquarters. We arrived at such conclusion in light of the fact that the duties assigned required the presence of the employees at the respective places at such regular and frequent intervals as would ordinarily be required in the performance of duty at headquarters and were of such nature so as to permit the employee's return to his residence or official station each day, which subjected him to no greater inconvenience or expense than the performance of duty at his permanent duty post. Whether or not performance of duty beyond the corporate limits of the employee's official station constitutes a travel status depends upon the facts of the case under consideration. 24 Comp. Gen. 179 (1944), and Matter of Buker and Sandusky, B-185195, May 28, 1976.

The reason underlying reimbursement of employees who are required to travel away from their permanent duty stations to perform official duties is that the employees incur additional expenses in excess of what would have been expended had they remained at their official stations. See Bornhoft v. United States, 137 Ct. Cl. 134 (1958). The record before us discloses that Mr. Geist remained at Alexandria, Virginia, during the entire period the evaluation panel was convened, and he did, in fact, incur additional expenses while participating in the meetings. The assigned temporary duty was of such a nature as to require his continued presence at Alexandria during the period the panel was in session.

Inasmuch as the official business performed by Mr. Geist in Alexandria, Virginia, was outside the corporate limits of the city of Gaithersburg, Maryland, the prohibition against payment of per diem in lieu of subsistence at the employee's permanent duty station, as found in the FTR, section 1-7.6a, does not apply in the instant case. Based upon the evidence of record, it may be concluded that Mr. Geist was in a travel status thereby entitling him to payment of a per diem allowance. See 24 Comp. Gen. 179, supra.

Section 1-7.3(a) requires each agency "to authorize only such per diem allowances as are justified by the circumstances affecting the travel." Here, the travel and the payment of per

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diem were approved at all required levels within the NBS before the travel was performed. We see no basis to question the agency's action in this regard. We believe that, where the travel is outside the corporate limits of the city or town in which the employee is stationed, but within a short distance of his official duty post, the agency has discretion to determine whether per diem expenses should be authorized. See Matter of Arthur K. Henning, B-186065, October 8, 1976. We have recognized that agencies generally have the authority and the responsibility to restrict payment of per diem upon a reasonable basis. 52 Comp. Gen. 446, 451-52 (1973). We do not mean by the present decision to circumscribe such agency discretion. We hold only that where an agency has exercised its discretion in a reasonable manner, this Office will not override the agency's determination.

Accordingly, the voucher may be certified for payment in the amount found due and if otherwise proper.


Deputy Comptroller General
of the United States