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DECISION



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

FILE: B-180910

DATE: July 18, 1978

MATTER OF: James K. Gibbs - Reconsideration - Per Diem -
Lodgings-Plus Method - Determining Average Cost

DIGEST:

- (1) Employee on extended TDY rented apartment by the week but occupied it only 5 nights because he voluntarily returned home weekends. Average daily cost of lodgings is determined by prorating rent over 7 days rather than 5. Otherwise not only per diem for days occupied but weekend travel allowance would be increased and employee would receive higher per diem than another employee similarly lodged who remained at the TDY site.
- (2) Employee on TDY rented apartment by the week and included expenses for "utilities and incidental expenses" and "linen service, maid service, etc." in addition to weekly rental in total cost of lodgings. Agency requested receipts for these additional expenses but none were furnished. Claimed additional expenses may not be included. Regulations permit agency to require receipts and provide that items in travel vouchers not properly supported by receipts when required must be suspended.

Mr. James K. Gibbs has requested further consideration of the method used to compute his "average cost of lodgings" in 54 Comp. Gen. 299 (1974) which was affirmed in Matter of James K. Gibbs B-180910, July 6, 1976. Those decisions sustained Certificate of Settlement No. Z-2509080, issued December 18, 1973, by our Claims Division which disallowed his claim for additional per diem and found him indebted to the Government for an overpayment of this allowance in the amount of \$72.10.

Mr. Gibbs, a civilian employee of the Department of the Army whose permanent duty station was Huntsville, Alabama, performed temporary duty (TDY) at Fort Benning, Georgia, from January 22, 1973, through March 30, 1973, under a travel order authorizing per diem computed by the "lodgings-plus" method. He returned home voluntarily for personal reasons on each of the intervening weekends and the one holiday.

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Mr. Gibbs rented a motel at a daily rate for a portion of his TDY period and an apartment at a weekly rate for the remainder. In adjudicating his claim for per diem in excess of the amount which had been allowed by the Department of the Army, our Claims Division computed the "average cost of lodgings" for the period the apartment was rented by dividing the weekly rate by 7 nights, even though the claimant only used the apartment for lodging 5 (and in one instance 4) nights a week because he returned home on weekends.

In his earlier requests for reconsideration Mr. Gibbs contested this method of computation. It was his contention that the weekly rental should be divided by the number of nights the apartment was occupied, rather than the period for which it was rented, to determine the average cost. The relevant regulation in effect at the time of the travel in question was contained in section 6.3c of the Standardized Government Travel Regulations, promulgated by Office of Management and Budget Circular No. A-7, revised August 17, 1971, which provided in pertinent part as follows:

"For travel in the continental United States when lodging away from the official station is required agencies shall fix per diem for employees partly on the basis of the average amount the traveler pays for lodgings. To such amount, i.e., the average of amounts paid for lodging while traveling on official business during the period covered by the voucher, shall be added a suitable allowance for meals and miscellaneous expenses. The resulting amount rounded to the next whole dollar, if the result is not in excess of the maximum per diem, will be the per diem rate to be applied to the traveler's reimbursement in accordance with the applicable provisions of this section. If such result is more than the maximum per diem allowable such maximum will be the per diem allowed. * * *"

The current regulation is found in paragraph 1-7.3c of the Federal Travel Regulations, FPMR 101-7, May 1973, as amended by FPMR Temporary Regulation A-11, Supplement 4, Attachment A, April 29, 1977, and reads in pertinent part as follows:

"(1) For travel in the conterminous United States when lodging away from the official duty station is required, the per diem rate shall be established on

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the basis of the average amount the traveler pays for lodging, plus an allowance of \$16 for meals and miscellaneous subsistence expenses. Calculation shall be as follows:

"(a) To determine the average cost of lodging, divide the total amount paid for lodgings during the period covered by the voucher by the number of nights for which lodgings were or would have been required while away from the official station. Exclude from this computation the night of the employee's return to his residence or official station.

"(b) To the average cost of lodging add the allowance for meals and miscellaneous expenses. The resulting amount rounded to the next whole dollar, subject to the maximum prescribed in 107.2a, is the rate to be applied to the traveler's reimbursement voucher." (Emphasis added.)

Where an employee on temporary duty (TDY) has rented lodging by the week or the month, rather than by the day, but has actually occupied the lodging for a lesser number of nights, we have applied the rule that the average daily cost is derived by dividing the weekly or monthly amount paid for lodging by the number of days in the rental period, i.e., 7 or 30, rather than by the number of nights the lodging was actually occupied. Matter of Nicholas G. Economy, B-188515, August 18, 1977; B-185467, May 5, 1976; Matter of Dr. Curtis W. Tarr, B-181294, March 14, 1976; B-168225, February 25, 1970.

Exceptions to the general rule have been permitted where the employee acted reasonably or prudently in renting lodging by the week or month and either (1) the temporary duty assignment was unexpectedly ended short of its anticipated duration through no fault of the employee, Matter of Robert L. Davis, B-188346, August 9, 1977; Matter of Texas C. Ching, B-188924, June 15, 1977; Matter of George Avery, B-134006, November 16, 1976; B-138032, January 2, 1959; or (2) the monthly or weekly rental was less than the amount the employee would have been required to pay based on the daily rental rate for the period of actual occupancy, Ching, supra; Matter of Willard R. Gillette, B-163341, May 13, 1975. In

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these situations prorating the monthly or weekly rental cost over the nights of actual occupancy, rather than the rental period, has been permitted, provided of course that the maximum authorized rate for per diem or actual subsistence expenses is not exceeded.

We do not, however, think an exception can be justified where the period of occupancy is less than the rental period because the employee voluntarily returns home for his own convenience for weekends and holidays. In this situation the employee may be reimbursed for round-trip transportation and per diem en route up to the amount he would have been allowed for per diem had he remained at the TDY station. FTR 1-7.5c. In some instances he may be allowed an even greater amount. 35 Comp. Gen. 1291 (1976).

In effect then, under the general rule, the employee usually receives an amount at least equal to the allowable per diem for the full rental period and recovers his full rental cost. Making an exception and permitting him to compute the average cost of lodgings by dividing the rental cost by the number of days actually occupied rather than the number of days in the rental period would not only increase his rate of per diem for the days of occupancy but would also increase his maximum allowance for the return home travel. Moreover, his per diem rate would be higher than that of another employee similarly lodged who remained at the TDY station over the weekend.

We cannot reasonably conclude that the governing regulation intended such a result. Accordingly, we affirm our prior determination that the average daily cost of lodging is properly determined by dividing the rental cost by the number of days in the rental period rather than the number of days of actual occupancy.

In addition to the foregoing Mr. Gibbs in his most recent request objects to the refusal of this Office to include in his total cost of lodgings certain other costs which he claimed in addition to the weekly rent of \$60, but for which he has not supplied requested receipts. He originally described these claimed costs as "utilities and incidental expenses" but in his latest letter he refers to them as "linen service, maid service, etc." Regarding this matter, the relevant regulations in effect at the time in question were those contained in sections 6.3c and 11.7 of the Standardized Government Travel Regulations, supra.

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These regulations provided that receipts for lodging costs could be required at the discretion of the agency and that items in travel vouchers not properly supported by receipts when required must be suspended. Similar provisions are contained in sections 1-7.3c and 1-11.7 of the current Federal Travel Regulations, supra.

The file shows that the agency requested receipts but Mr. Gibbs did not supply them. Moreover he was advised in 54 Comp. Gen. 299, supra, that if he could furnish receipts for these items this Office would consider the matter further. Mr. Gibbs states in his most recent letter that his supervisor approved these costs but still no receipts have been forthcoming. In these circumstances this Office has no authority to allow these claimed costs, particularly in view of the fact that not all incidental expenses may properly be included in the cost of lodgings. 52 Comp. Gen. 730 (1973). Therefore, we affirm our prior determination that these items must be excluded from the total cost of lodgings.

Accordingly our prior decisions, 54 Comp. Gen. 299 (1974) and Matter of James K. Gibbs, B-180910, July 9, 1976, are affirmed.

For The
Comptroller General
of the United States

