

**DECISION**



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

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8274

FILE: B-192271

DATE: November 8, 1978

MATTER OF: Mr. Ronald Miele

**DIGEST:** An employee attending a training course at an installation of the uniformed services is not entitled under subparagraph C1055 of 2 Joint Travel Regulations (2 JTR) to the quarters portion of the per diem allowance authorized by 5 U.S.C. 5702(a), where adequate Government quarters are available but not used. Further, under C1055-1 item 2 and C1055-2 of 2 JTR, in the absence of a statement of the commanding officer responsible for the Government quarters that utilization was impractical, or nonavailability can be ascertained, it shall be assumed that adequate quarters were available.

This action is in response to a letter dated May 10, 1978, with enclosures, from the Accounting and Finance Officer, Defense Logistics Agency Administrative Support Center, Alexandria, Virginia, submitting a voucher and requesting an advance decision concerning a claim of Mr. Ronald Miele for payment of commercial quarters while on temporary duty (TDY) attending the Cost Accounting Standard Workshop at the United States Logistics Management Center, Fort Lee, Virginia, from April 10, 1978, through April 21, 1978. This request was assigned PDTATAC Control No. 78-25 and forwarded to this Office by the Per Diem, Travel and Transportation Allowance Committee.

The submission states that although Government quarters were available at Fort Lee, Virginia, Mr. Miele refused to accept these quarters because he considered them substandard and their condition unsatisfactory. He did not obtain a certificate of nonavailability of adequate quarters, but obtained commercial quarters rather than use those assigned. The travel voucher submitted by him attaches a statement by Colonel John B. Nelson, Director, Procurement and Production of the Administrative Support Center that use of the assigned quarters would have adversely affected Mr. Miele's ability to attend and complete the training. However, the Accounting and Finance Officer believes that this statement cannot be used in lieu of a statement of nonavailability

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and the claim cannot be paid, since in the absence of such statement it must be assumed that adequate quarters were available.

Section 5702(a) of title 5, United States Code (1976), provides as follows:

"(a) Under regulations prescribed under section 5707 of this title, an employee while traveling on official business away from his designated post of duty \* \* \* is entitled to (1) a per diem allowance for travel inside the continental United States at a rate not to exceed \$35 \* \* \*."

Implementing regulations are found in chapter 1, Volume 2, Joint Travel Regulations (2 JTR), Part B of which authorizes reimbursement of certain travel expenses incurred in connection with TDY under certain conditions.

Paragraph C1055, 2 JTR (change 148, February 1, 1978), in effect at the time of Mr. Miele's TDY, provides in pertinent part:

"C1055 USE OF GOVERNMENT QUARTERS

"1. GENERAL. Although an employee may not be required to utilize Government quarters, when adequate Government quarters are available but not used, the payment of the quarters portion of the per diem or actual expense allowances of any employee on temporary duty away from his designated post of duty may not be made except under the following conditions:

- "1. when the order-issuing authority, either prior or subsequent to the travel involved, issues a statement to the effect that the utilization of Government quarters at the temporary duty station or delay point would adversely affect the performance of the assigned mission (this exception is not applicable to personnel

attending training courses at an installation of the Uniformed Services);

- "2. when the commanding officer (or designated representative) responsible for Government quarters at the temporary duty or delay point furnishes a statement to the effect that utilization of Government quarters was impracticable; or
- "3. when, prior to 1 October 1977, the employee entered into a commitment for quarters which cannot be canceled without a financial penalty to the employee.

"2. EFFECT OF ABSENCE OF STATEMENT. In the absence of a statement issued under the provisions of subparagraph 1 or unless the nonavailability of adequate Government quarters can be ascertained by reference to a publication issued by the Uniformed Service concerned, it shall be assumed that adequate Government quarters were available on any day for which the employee fails to submit an appropriate statement \* \* \* indicating that such quarters were not available or not utilized on that date. \* \* \*  
(Emphasis added.)

Since Mr. Miele was an employee attending a training course at an installation of the uniformed services, the statement of Colonel Nelson, a representative of his order-issuing authority, to the effect that use of Government quarters at his TDY station would adversely affect the performance of the assigned mission, would not entitle him to payment of the quarters portion of the per diem allowance. Further, since the commanding officer at the TDY station did not issue a statement required under the exception of subparagraph C1055-2 of 2 JTR to the effect that utilization of Government quarters was impractical, or nonavailability can be ascertained, it shall be assumed that adequate quarters were available for any day that Mr. Miele failed to submit a statement that such quarters were not available or not utilized on that date.

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The determination as to whether Government quarters are adequate must be made by the agency which has jurisdiction over those quarters. Although we would not condone a practice of requiring employees to reside in obviously unhealthy or otherwise inadequate rooms, we cannot substitute our judgment with respect to these factors for that of the responsible agency officials. Further, an employee who is required to occupy Government quarters must abide by the determination of adequacy made by the agency. If he chooses to occupy commercial quarters in such circumstances he is not entitled to per diem computed on the basis of the costs he incurred for such quarters.

The question of payment presented by the Accounting and Finance Officer is therefore answered in the negative. Payment may not be made on the voucher submitted and it will be retained in this Office.

  
Deputy Comptroller General  
of the United States