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DECISION



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

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FILE: B-193382

DATE: February 16, 1979

MATTER OF: Betty L. McCrory - Noncommercial lodgings -
Agency rate regulations

DIGEST: Employee on temporary duty lodged with a friend in a high-cost area, but had not obtained prior agency approval of a per diem rate. Agency is authorized to establish specific per diem rates under FTR para. 1-7.3c(3) for employees who obtain noncommercial lodgings with friends or relatives. Such regulations must be consistent with the FTR as well as subject to reasonable interpretation. Here the employee may be reimbursed for such lodging expenses if substantiated in accordance with the criteria established in 52 Comp. Gen. 78 (1972), since the agency regulation requiring advance approval is inconsistent with FTR and not subject to reasonable interpretation.

This action is in response to a letter from Ms. Marie Bell, Authorized Certifying Officer, Bureau of Alcohol, Tobacco and Firearms (ATF), requesting an advance decision on whether an employee on temporary duty may be reimbursed for lodging in the private residence of a friend in the circumstances described.

The record shows that the employee, Ms. Betty L. McCrory, was authorized to travel from Cincinnati, Ohio, to Washington, D.C., on official business for temporary duty from July 8, through July 15, 1978. The employee obtained lodging with a friend for which she paid \$25 a day for a total of \$125. At the time the travel was performed, July 1978, the applicable part of the agency regulations, ATF Travel Order O 1500.1A, Change 1, April 26, 1978, provided as follows:

"Reimbursement to employees who are claiming payment for lodging with friends or relatives is discouraged and requires advance approval of the Headquarters' Fiscal Officer who will establish the allowable rate, if applicable. GAO has consistently disallowed payment of this type. If an employee stays with friends or relatives without prior approval, there will be no reimbursement forthcoming for lodging."

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Since no advance approval was requested or received and no allowable rate established for lodging with friends, the claim for reimbursement was denied. The employee states she was unaware of the agency regulations.

Section 5702 of title 5, United States Code (1976), provides that under regulations prescribed by the Administrator of General Services, employees traveling on official business are entitled to a per diem allowance inside the continental United States at a rate not to exceed \$35. When the per diem rate otherwise allowable is determined to be inadequate due to unusual circumstances of the travel assignment or where the travel is to a high-rate geographical area designated as such, an employee may be reimbursed the actual and necessary expenses at the rate set which in no event can exceed \$50 for each day. At the time of the employee's travel, Washington, D.C., was designated as a high-rate geographical area and the actual expense rate was set at not to exceed \$50.

Concerning subsistence on a per diem basis, we stated in 55 Comp. Gen. 856 (1976) that an employee may not be paid per diem under the lodgings-plus system based on payment of \$14 per night for lodging at the home of his son's neighbor, absent information showing that the \$14 amount reflects additional expenses incurred by the host as a result of the employee's stay. We suggested that it would be appropriate for agencies to establish a specific per diem rate under FTR para. 1-7.3c for cases where it is known in advance that the employees will stay with friends or relatives. We there stated:

"We have recognized that the lodgings-plus system may well be inappropriate in the situation where an employee occupies a trailer or other recreational vehicle in lieu of commercial facilities while on a temporary duty assignment. In such cases we have held that it would be appropriate for the agency involved to establish a specific per diem rate to be paid in connection with the employee's occupancy of a mobile home or similar accommodation. B-175322, April 28, 1972, and B-178310, June 6, 1973.

"In line with the cited cases we believe it would be appropriate for DSA, as well as other agencies, to establish a specific per diem rate when it is known in advance that employees will not use commercial facilities but stay with friends or relatives. We do not, however, agree with DSA's suggestion that the per diem rate payable should be based on the lowest amount charged for suitable commercial accommodations in the area, even where the agency is justified in establishing a specific per diem rate under 1-7.3c of the FTR. As was stated in 52 Comp. Gen. 78, supra, it is neither necessary nor reasonable for an employee to pay commercial rates to friends or relatives for lodgings or meals. In our opinion, a reasonable basis for reimbursing friends or relatives for the use of noncommercial lodgings or meals would be an amount considerably less than motel or restaurant charges." (Emphasis added.)

Effective July 1, 1975, Temporary Regulation A-11, Supplement 1, amended the FTR to specifically provide that in the case of travel to a high-rate geographical area, a per diem allowance may be authorized under FTR para. 1-7.3 if the factors cited in para. 1-7.3a would reduce the employee's travel expenses. Paragraph 1-8.1b now provides in pertinent part:

"b. Travel to high rate geographical areas.
Actual subsistence expense reimbursement shall normally be authorized or approved whenever temporary duty travel is performed to or in a location designated as a high rate geographical area (see 1-8.6) except when the high rate geographical area is only an enroute or intermediate stopover point at which no official duty is performed. Agencies may, however, authorize other appropriate and necessary reimbursement as follows:

"(1) A per diem allowance under 1-7.3 if the factors cited in 1-7.3a would reduce the travel expenses of an employee provided the agency official

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designated under 1-8.3a(1) determines the existence of such factors in a particular travel assignment and authorizes an appropriate per diem rate. * * *

Paragraph 1-7.3a, quoted therein, sets forth the factors that may reduce an employee's travel expenses and provides that the rules contained in para. 1-7.3 shall be applied in the situations covered. Accordingly, an agency may provide by regulation for a specific per diem rate for staying with friends or relatives in high-rate geographical areas. However, the determination to apply that rate must be made on a case-by-case basis.

Where an appropriate specific per diem rate is established in advance for instances in which the employee lodges in non-commercial quarters, that rate may be applied to the specific days on which he in fact obtains noncommercial lodgings and his per diem under the lodgings-plus system for the remainder of the period covered by the voucher would be determined without regard to those particular days. B-189317, November 23, 1977.

The authority for an agency to establish a specific rate while lodging with friends or relatives applies only to per diem which includes lodging and subsistence. There is no authority to set a lodging rate as such. Compare B-191673, December 5, 1978, concerning a related treatment on subsistence while occupying temporary quarters.

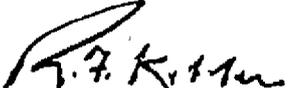
An employee is presumed to know the content of agency regulations which affect him. However, the regulations must be consistent with the FTR as well as subject to reasonable interpretation. The above-quoted agency regulation is neither consistent with the FTR nor reasonable in its provisions. The use of the term "lodging" implies that a reduced rate for lodging alone could be imposed. This is contrary to the regulations and our ruling in 55 Comp. Gen. 856, supra. Under the FTR the agency has 3 options concerning subsistence in temporary duty travel situations. It can authorize actual expenses, per diem on a lodgings-plus basis not to exceed the legal maximum, or a reduced per diem. The regulation also ascertains that "GAO has consistently disallowed payment of this type" (lodging with friends or relatives). Such is not the case. We have set some guidelines for the determination of the reasonableness of charges when the lodgings-plus or actual

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expense method of computing allowable per diem is authorized and have allowed payments where the claim based upon expenses in staying with friends or relatives has been substantiated.

Since the ATF regulation in question does not comply with the FTR or the rules established in our decisions it should not be used to deny the employee concerned reimbursement under the actual expense method of computing travel per diem as authorized in our decisions.

Accordingly, reimbursement may be made to Ms. McGrory under the rules applicable to computing reimbursement on an actual expense basis. Under those rules she must demonstrate the reasonableness of any amount paid to her friend based upon added expense caused her friend. The voucher which is returned may be certified for payment to the extent such information is provided.


Deputy Comptroller General
of the United States