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DECISION

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

FILE: B-197368

DATE: July 15, 1980

MATTER OF: Howard M. Feuer - [Claims for mileage and per diem while on temporary duty] near headquarters

DIGEST: 1. Employee who frequently performs temporary duty near his headquarters claims mileage for travel between residence and temporary duty station. Agency regulations require deduction of normal commuting expenses from such mileage claims, but regulations do not provide guidance on computing expenses incurred in use of carpool. In absence of agency regulations, employee's normal commuting expenses should be determined on weekly basis and be divided by five to determine daily expense.

2. Employee claims per diem for travel to nearby temporary duty station where travel time exceeds 10 hours. Social Security Administration (SSA) denied claims since SSA regulation precludes per diem except where travel exceeds employee's normal travel time or distance of normal commute to permanent duty station. SSA regulation falls within discretion set forth in Federal Travel Regulations and Health, Education, and Welfare travel regulations and is consistent with our decisions. See Buker and Sandusky, B-185195, May 28, 1976.

This decision is in response to a request from S. Ronald Luiso, Director, Division of Accounting, Fiscal and Budgeting Services, Region II, Department of Health, Education, and Welfare (HEW), for a decision on the claims of Mr. Howard M. Feuer, an Area Director of the Social Security Administration (SSA), for mileage and per diem incident to his performing temporary duty near his headquarters. The issues are whether Mr. Feuer is entitled to per diem where such temporary duty does not require overnight lodging away from his residence and how his mileage claims may be properly computed.

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MILEAGE

The agency report states that in his function as an Area Director, Mr. Feuer is frequently required to visit various SSA offices near his permanent duty station. Under agency travel regulations, an employee who repeatedly performs such travel may be reimbursed for allowable expenses which are in excess of his normal commuting expenses. Mr. Feuer commutes to his permanent duty station by carpool, and the certifying officer, in the absence of regulations concerning the use of carpools, has determined Mr. Feuer's normal commuting expenses by means of a "constructive cost concept". Under this method, the agency took the round-trip mileage between Mr. Feuer's residence and permanent duty station (76), divided it by two since Mr. Feuer carpools with another individual (38), and multiplied that figure by the mileage rate for use of privately owned vehicles (17 cents and later 18 and one-half cents per mile) to determine his normal commuting expenses (\$6.46 or \$7.03 per day). This figure was then deducted from Mr. Feuer's claims for mileage between his residence and the various temporary duty stations.

Mr. Feuer disputes this computation by arguing that on Monday, Wednesday, and Friday he has no commuting expenses to his permanent duty station since the other carpool member drives and pays for all tolls and expenses. Therefore, Mr. Feuer claims full reimbursement for temporary duty travel on Monday, Wednesday, or Friday without deduction for his normal commuting expenses and no reimbursement for temporary duty travel on Tuesday or Thursday, the days Mr. Feuer normally drives the carpool to the permanent duty station.

The agency questions, in the absence of regulations involving the use of carpools in determining normal commuting costs, what method of computation should be used:

1. Constructive cost concept;

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2. Mr. Feuer's method; or
3. Difference in mileage to temporary duty station and mileage to permanent duty station.

It is well established that employees must place themselves at their regular places of work and return to their residences at their own expense. 32 Comp. Gen. 235 (1952). Our decisions have also held that when an employee is assigned to a nearby temporary duty post he may be reimbursed his full travel expenses or only that amount which exceeds his normal commuting expense to his permanent duty station. 36 Comp. Gen. 795 (1957); 32 *id.* 235, *supra*. The determination to limit reimbursement for travel to a temporary duty station is within the discretion of the employing agency with due consideration given to the interests of both the Government and the employee, and it is not within the jurisdiction of our Office to question the decision of the agency to so limit travel reimbursement. See Brian E. Charnick, B-184175, June 8, 1979, and August 5, 1975; and B-164189, June 25, 1968.

Under the provisions of the HEW Travel Manual, para. 5-50-30B, approving officials may limit reimbursement for repeated travel from home to a temporary duty station to those expenses in excess of normal commuting costs. The same policy is set forth in the SSA Administrative Directives System Guide (N.Y. ORC. F: 240-11, July 15, 1978). In the examples set forth in the SSA regulation, an employee who has the same commuting expense each day will have his travel reimbursement determined on a daily basis, but there is no guidance set forth in these regulations to determine the normal commuting expenses of an employee using a carpool.

In William A. Gates, B-188862, November 23, 1977, a decision cited by the agency as limiting Mr. Feuer's reimbursement, we considered the claim of an employee for mileage for reporting to a nearby temporary duty

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station. We held in Gates that under Department of Transportation (DOT) regulations normal commuting costs could be deducted from the employee's mileage claims only on those days that he reported to his headquarters office at some time during the day and not on days when he reported to the temporary duty station only. In this case Mr. Gates computed his claim on the basis of his total mileage for the 4-week period minus the miles he ordinarily would have driven as a member of a carpool during the same period (normally drove once per week, 35 miles round trip).

The applicable DOT regulation in the Gates case used mileage for comparison purposes. Implied in our decision is that the weekly figures used by Mr. Gates would be reduced to a daily figure in order to apply it to only those days in which he visited the headquarters office. In view of our decision in Gates and the examples cited in the SSA regulations, which compute normal commuting expenses on a daily basis, we believe Mr. Feuer's normal commuting costs should be computed on a daily basis.

The methods proposed by the agency, constructive cost (total mileage divided by two) or mileage comparison (distance to temporary site less distance to headquarters) do not adequately reflect Mr. Feuer's true commuting costs in his carpool arrangement. On the other hand, Mr. Feuer's proposal (full claims Monday, Wednesday, or Friday, no claims Tuesday or Thursday) would not necessarily reflect an offset of normal commuting costs depending upon which day of the week he was required to perform temporary duty. In the absence of agency regulations, we conclude that Mr. Feuer's daily normal commuting costs should be computed on the basis of his total weekly costs divided by 5 (weekly mileage as driver in carpool, times applicable mileage rate, plus tolls, divided by 5). The resulting figure would be deducted from Mr. Feuer's mileage claims for temporary duty travel, regardless of which day of the week Mr. Feuer performed temporary duty.

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Mr. Feuer's claim for temporary duty travel should be recomputed consistent with the above discussion and not on the basis of the three proposals set forth by the certifying officer.

At this time we do not intend to establish "precise guidelines" on the use of carpools as suggested by the agency in this case. Other agencies may have adopted different policies (in Gates DOT compared distances traveled rather than commuting costs) and, as noted earlier, the payment of travel expenses to nearby temporary duty stations is a matter for agency discretion. As pointed out by SSA, the use of carpools has recently increased, and where agencies decide to deduct normal commuting costs or mileage from claims for temporary duty travel, those agencies should determine through internal regulations how carpools should be treated.

PER DIEM

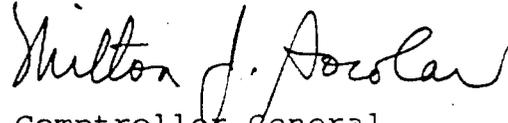
Mr. Feuer also claims per diem in connection with travel on these temporary assignments where the period of travel is more than 10 hours but does not require overnight lodging. Under HEW regulations para. 6-10-20, the approving official may reduce per diem rates to provide the employee with reimbursement for reasonable expenses and not allow windfall profits. The SSA regulation further limits reimbursement to situations where the time in travel status exceeds 10 hours and: (1) the time spent in travel exceeds the employee's normal commute; or (2) the round trip distance traveled between the residence and temporary duty station exceeds the employee's normal round trip commute to his permanent duty station.

The agency denied Mr. Feuer's claim for per diem since his time spent in travel did not exceed his normal commuting time (11 hours) or the distance traveled to the temporary duty station did not exceed the distance to his permanent duty station. Mr. Feuer questions the authority of SSA to set a policy different from that of HEW and place a restriction on an employee's time in travel status of other than 10 hours.

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Under the provisions of the Federal Travel Regulations (FTR), para. 1-7.6d, an employee may not be allowed per diem when the travel period is 10 hours or less during the same calendar day except for certain situations where the travel begins before 6 a.m. or ends after 8 p.m. Our Office has held that this provision does not require payment of per diem for travel of 24 hours or less but merely precludes payment for travel of 10 hours or less except for certain situations. See Buker and Sandusky, B-185195, May 28, 1976, and decisions cited therein.

As we held in Buker and Sandusky, *supra*, it is within the discretion of the employing agency to authorize or approve per diem or deny it where the travel involves only short distances outside the duty station area. In the present case SSA chose to so limit reimbursement or per diem to certain situations, and since such action falls within the discretion set forth in the FTR's and HEW's regulations and is consistent with our decisions, we find no legal objection to this policy. Accordingly, we conclude that Mr. Feuer's claims for per diem were properly denied.



For the Comptroller General
of the United States