

15743 Mr. Goddard

DECISION



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

FILE: B-194197

DATE: December 24, 1980

MATTER OF: Nicholas M. Veneziano - Reconsideration, Actual Subsistence Expense } Status
[Claim For]

DIGEST: Although Administrator of General Services (GSA) is authorized to promulgate Federal Travel Regulations (FTR), the General Accounting Office (GAO) must interpret the laws and regulations in settling claims. Guidance issued by Assistant Administrator of General Services interpreting FTR do not bind agencies as do the FTR but GAO will accord great deference to such guidance. Since GSA employee relied on GSA guidance interpreting FTR as precluding application of 10 hour rule in case of actual subsistence reimbursement, and since decision B-184489, April 16, 1976, was similarly interpreted by a number of agencies, the 10 hour rule shall not be applied to employee or in cases of actual subsistence reimbursement prior to issuance of 58 Comp. Gen. 810. but the rule shall apply after September 27, 1979, the date of issuance of our decision.

Mr. Nicholas M. Veneziano, an employee of the General Services Administration (GSA), has requested reconsideration of our decision Nicholas M. Veneziano 58 Comp. Gen. 810. (1979) in which we denied his claim for actual subsistence expenses incurred incident to duty he performed in Newark, New Jersey on July 20, 1977.

BACKGROUND

Mr. Veneziano, whose official duty station is New York, New York, and whose residence is in Brooklyn, New York, was ordered to perform official business in Newark, New Jersey, where he incurred the expense of \$2.75 for lunch. Citing decision B-184489, April 16, 1976, and paragraph 1-8.6 of the Federal Travel Regulations (FTR) (FPMR Temporary Regulation A-11, Supp. 4,

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Attachment A) (1977), Mr. Veneziano claimed reimbursement for lunch.

We denied Mr. Veneziano's claim in B-194197 September 27, 1979, (58 Comp. Gen. 810) on the basis that the prohibition against the payment of per diem for travel of 10 hours or less, found in FTR para. 1-7.6d(1), is applicable to employees travel to high-rate geographical areas, and Mr. Veneziano had performed his travel to a high rate geographical area in less than 10 hours. We reasoned as follows:

"In decision B-184489, April 16, 1976, cited by Mr. Veneziano, we held that since the regulations pertaining to high-rate geographical areas did not contain special provisions for reimbursement of actual subsistence expenses for travel of 24 hours or less when no lodging is involved an agency could not set a per diem rate of \$24 or less for such travel to a high-rate geographical area. The regulations have since been amended so that a per diem rate may be set in a high-rate geographical area when circumstances warrant it. See para. 1-8.1b(1) of the FTR, FPMR Temporary Regulation A-11, Supp. 4, Attachment A. (April 29, 1977).

"We do not think it follows, however, that the absolute prohibition against the payment of per diem for travel of 10 hours or less found in FTR para. 1-7.6d(1) has no application to employees' travel to high-rate geographical areas. The payment of actual expenses in high-rate geographical areas is normally contingent upon the entitlement to per diem. FTR para. 1-8.1a. Since per diem may not be allowed in cases of travel of 10 hours or less, actual expenses reimbursement under Part 8 of the FTR is likewise limited. Decision B-184489, April 16, 1976, is distinguishable since in that case we held that the per diem method of reimbursing an employee had no application to an employee's

reimbursement when his entitlement was under the distinct actual expense mode. This was later corrected by an amendment to the regulations. In the case at hand, however, there is an absolute bar on the payment of per diem for travel of 10 hours or less and this bar is applicable to the payment of actual subsistence expenses in like situations.

Mr. Veneziano, in his request for reconsideration, states that our decision is in conflict with guidance provided by GSA's Assistant Administrator for Administration. Mr. Veneziano cites a memorandum from the Assistant Administrator dated November 5, 1975 which, by means of an attachment, provided guidance on the preparation of travel vouchers. The salient portion of the attachment provides as follows:

"e. Travel of less than 24 hours (per diem). * * * If the travel was 10 hours or less, he would not be allowed per diem unless the travel was at least six hours and the trip began before 6 A.M. or ended after 8 P.M. * * *

"f. Travel of less than 24 hours (high rate geographical area). For travel of less than 24 hours in a high rate geographical area with no lodging required, the traveler will be paid actual expenses not to exceed the maximum authorized allowance. The 10-hour limitation as in e, above, does not apply." (Underscoring supplied.)

Mr. Veneziano states that his voucher was approved by the approving official under the guidance in the above instructions which he assumes were within the Assistant Administrator's authority to issue. He says what is involved here is the issue as to who has the authority to prescribe regulations regarding travel allowances. He asks whether it is the Administrator of General Services or the Comptroller General.

OPINION

The Administrator of General Services is given the authority to prescribe regulations necessary to administer the laws relating to travel and subsistence expenses and mileage allowances. 5 U.S.C. 5707 (1976). These regulations are the Federal Travel Regulations (FPMR 101-7) and they govern the payment of travel expenses of Federal employees. The General Accounting Office (GAO), however, is required by law to settle claims against the Government of the United States. 31 U.S.C. § 71. In performing this function GAO is necessarily called upon to construe the laws and regulations which may be pertinent to an individual's claim against the Government.

The guidance from the Assistant Administrator concerning the 10 hour rule, which is cited by Mr. Veneziano has not been issued as a part of the Federal Travel Regulations. Rather the guidance appears to be in the nature of internal regulations. Since the guidance at issue is not a part of the Federal Travel Regulations, we are not bound to follow its instructions and we are free to construe the FTR's in a contrary manner.

However, it is a general principle of administrative law that an agency's construction and interpretation of its own regulations will generally be accorded great deference by a court or reviewing authority. Udall v. Tallman, 380 U.S. 1 1964; Bowles v. Seminole Rock Co., 325 U.S. 410 (1944). When we originally considered Mr. Veneziano's claim the Assistant Administrator's guidance was not a part of the record before us. Although the Assistant Administrator's guidance is not binding on us, as the FTR's are, we will reconsider Mr. Veneziano's claim in the light of this internal GSA guidance.

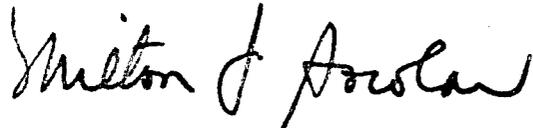
In this connection, we have been informed that a number of agencies besides GSA have interpreted our decision B-184489, April 16, 1976, as prohibiting the extension of the 10 hour rule to travel to high-rate geographical areas. We recognize that the FTR's and

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our decision B-184489, April 16, 1976, could have been construed as prohibiting the application of the 10 hour rule in actual subsistence cases. Accordingly, since the Assistant Administrator's interpretation of GSA's own regulations, the FTR's, was not clearly erroneous and since decision B-184489, April 16, 1976, may have encouraged such an interpretation by others, we shall not apply our decision to the contrary in 58 Comp. Gen. 810 to travel performed before or on its date of issuance, namely September 27, 1979.

It is still our view, however, for the reasons set out in 58 Comp. Gen. 810, that subsistence expenses may not be paid for travel of 10 hours or less to high-rate geographical areas. Accordingly, that rule is applicable for travel performed after September 27, 1979, the date of issuance of 58 Comp. Gen. 810.

Mr. Veneziano's voucher, having been duly approved by the appropriate official, may be certified for payment for the reasons stated above.



For The Comptroller General
of the United States