

Putnam PL

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DECISION



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

[Claim For Additional Per Diem]

FILE: B-199467

DATE: March 17, 1981

MATTER OF: George A. Yesalavich - Per Diem
Allowance - Travel Between Old
and New Duty Stations

DIGEST:

Employee transferred from Medford to Portland, Oregon (282 miles). He and family arose at 5:00 a.m. and left Medford at 4:30 p.m. after moving company completed loading household goods. Enroute, employee, after traveling approximately 175 miles, stopped overnight in Eugene, Oregon, due to late hour, ground fog on highway, and fatigued condition of family. Employee continued trip on following morning and arrived in Portland at 11:00 a.m. Held, claimant exercised good judgment and prudence in scheduling move. Further, in stopping overnight, employee acted as a prudent person and delay in travel was justifiable. Therefore, per diem allowance is payable for entire period of travel.

This decision is in response to an appeal by Mr. George A. Yesalayich, an employee of the Internal Revenue Service (IRS), Department of the Treasury, from that portion of the Settlement Certificate Z-2802439, dated January 14, 1980, issued by our Claims Division, which disallowed Mr. Yesalayich's claim for additional per diem for expenses incurred by him and his family incident to his permanent change of station. The disallowance was based upon the determination by the agency that the travel could have been accomplished in 8 to 10 hours and that under paragraph 1-1.3a, Federal Travel Regulations (FTR) (FPMR 101-7, May 1973), a prudent person traveling on personal business would not have interrupted his travel to obtain lodging for the night.

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On appeal, the claimant has given us additional facts to consider. Those facts, together with the information previously submitted, show the following. By travel authorization dated September 1, 1977, Mr. Yesalavich was authorized a change of official station from Medford, Oregon, to Portland, Oregon. Travel by his privately owned vehicle was approved. On Friday, September 30, 1977, his entire family was up and dressed by 5:00 a.m. in order to finish packing and be prepared for the moving company who came to move their household effects at 8:00 a.m. The movers completed loading the household goods at 2:30 p.m. and Mr. Yesalavich and his wife left their old residence at 3:30 p.m. after loading their automobiles with clothing, workbooks, pets, plants, personal items, etc., and closing the house. At 3:55 p.m., they picked up their three children from school and stopped at the telephone company office to return the telephone and discontinue service. They left Medford at 4:30 p.m. and stopped to eat dinner in Roseburg, Oregon, about 100 miles away. After driving 75 additional miles, they stopped in Eugene, Oregon, at about 8:30 p.m., for gasoline, and decided to stay there overnight.

Mr. Yesalavich's reasons for stopping at Eugene are as follows. He states that the trip was made on a Friday night and there was increased traffic on the highway. Weather conditions in Eugene were not good with ground fog covering the highway and visibility becoming difficult. He was unable to determine whether the fog continued up the valley for another 60 miles as it usually does. Due to these conditions and the fatigued condition of himself and his family, he decided to obtain lodging in Eugene. Mr. Yesalavich comments that under normal driving conditions, they could have arrived in Portland about 11:00 p.m. but he would have had to find a motel that would take pets. He states that the stopover in Eugene was not made to increase costs or spend a night there, but was caused by the potentially difficult driving conditions, the fatigued condition of his family, and his concern for their safety. He continued the trip the next morning and arrived in



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Portland at about 11:00 a.m. that day. Mr. Yesalavich feels that he acted prudently in staying overnight in Eugene under the circumstances.

The IRS determined that Mr. Yesalavich could have traveled the distance of 282 miles in about 8 to 10 hours, and had he scheduled his move at an earlier time, he would not have incurred the claimed lodging expenses. Based upon an estimated traveltime of 10 hours, the employee was reimbursed for one-half day at a per diem of \$16. He has submitted a supplemental travel voucher in which he claims additional per diem of \$108.

Paragraph 2-2.3d(2) of the Federal Travel Regulations provides that per diem allowances enroute between the old and new duty stations are to be paid on the basis of the actual time used to complete the trip, but the allowance may not exceed an amount computed on the basis of a minimum driving distance per day prescribed as reasonable by the authorizing official, and not less than an average of 300 miles per calendar day. This Office has interpreted the above provision of the FTR as requiring the employee to travel a specified distance each day, that is, an average of 300 miles (or a higher daily mileage rate prescribed by the authorizing official) per calendar day. We have further stated that the regulation does not permit the payment of an increased per diem allowance due to extenuating circumstances. B-190149, December 23, 1977; B-176956, December 14, 1972; B-175018, June 19, 1972; and B-169065, March 17, 1970.

However, in interpreting paragraph 2-2.3d(2), FTR, this Office has also stated that delays in travel caused by adverse weather or road conditions are for consideration in determining whether per diem should be paid and if so, the amount thereof. David Houseworth, B-195764, February 20, 1980; B-163654, June 22, 1971.

While we agree with the IRS that Mr. Yesalavich could have traveled the distance of 282 miles in about 8 to 10 hours, we do not agree that he did not exercise



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good judgment and prudence in scheduling his move. The evidence submitted by Mr. Yesalavich shows that the movers arrived at 8:00 a.m. and did not complete loading the household effects until 2:30 p.m. After loading their automobiles, closing the house, and picking up their three children from school, the employee and his wife left Medford at 4:30 p.m. Under the circumstances, we are unable to perceive how the claimant could have scheduled his move at an earlier time. Further, it appears that he commenced travel within a reasonable time after the moving company had completed loading his household goods. We are, therefore, of the opinion that Mr. Yesalavich did exercise good judgment and prudence in scheduling his move and in commencing travel to his new official station.

With respect to the stopover in Eugene, the record shows that Mr. Yesalavich drove approximately 175 miles before stopping for the night in Eugene and that he stopped in Eugene at about 8:30 p.m. because weather conditions were not good with ground fog covering the highway and visibility becoming difficult. Due to the adverse weather conditions and the fatigued condition of himself and his family, the employee decided to obtain lodging accommodations in Eugene. In light of the foregoing, we are of the opinion that Mr. Yesalavich acted as a prudent person would have acted under the circumstances and that the period of delay was justifiable and was not for the personal benefit of the employee. See Kenneth G. Buss, 56 Comp. Gen. 104 (1976); Kenneth C. Blake, 41 id. 605 (1962). Since he acted prudently under the circumstances, he may be paid per diem for the entire period of travel, in accordance with paragraphs 1-7.6d(1) and 2-2.3d(3) of the Federal Travel Regulations.

Accordingly, the portion of the supplemental travel voucher claiming an additional per diem allowance in the amount of \$108 may be certified for payment.

Acting

Milton J. Fowler
Comptroller General
of the United States