

Mr. Gail

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DECISION



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

FILE: B-198399

DATE: April 6, 1981

MATTER OF: Lawrence H. Weintrob - Claim for additional per diem allowance

DIGEST: Employee claims additional per diem allowance based on fact that when he left for temporary duty in Germany, in August 1979, per diem rate for Heidelberg was \$68. However, September 1979, change in Joint Travel Regulations, reducing the per diem rate for Heidelberg, to \$48 effective as of June 1, 1979, was based on State Department regulations, issued in June 1979, which made the \$48 per diem rate effective as of June 1, 1979. Employee's ignorance of changed rates is irrelevant since amendatory regulation changing the per diem rates has the force and effect of law.

Mr. Lawrence H. Weintrob has appealed our Claims Division denial of April 30, 1980 (Z-2587483), of his claim for additional per diem expenses. Mr. Weintrob is an employee of the Defense Logistics Agency (DLA) of the Department of Defense. He took an official trip to Germany visiting several cities in August and September of 1979. His authorization for the trip, dated August 8, 1979, indicated that he was to receive the per diem as authorized by the Joint Travel Regulations, Volume II (2 JTR). (2 JTR covers Department of Defense Civilian Personnel.) He left for Germany on August 28. At that time the per diem rate for Heidelberg published in 2 JTR was \$68. However, on September 1, 1979, the Per Diem, Travel and Transportation Allowance Committee (Committee) issued Change 167 to 2 JTR, which stipulated, as of June 1, 1979, a per diem rate of \$48 for Heidelberg. Mr. Weintrob visited Heidelberg on September 3 and returned there for several more days during his trip.

Mr. Weintrob has since been informed that he would be paid the per diem rate of \$48 for the time spent in Heidelberg. He believes the applicable

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B-198399

per diem rate is \$68. Under the latter rate, he would be entitled to an additional \$90.

Mr. Weintrob contends that the "sharp retroactive reduction" in the rate of per diem was "arbitrary and capricious." He cites as evidence for his contention that on October 3, 1979, a "routine message" was issued by the Committee which changed the per diem rate in Heidelberg to \$72. (See also Change 171 to 2 JTR, dated January 1, 1980, making the \$72 rate effective as of October 1, 1979.) Moreover, he claims that the per diem rate for Heidelberg under Volume I of the JTR (covering members of the Uniformed Services) increased during the time in question.

The Claims Division premised its denial upon the assumption that Mr. Weintrob had requested reimbursement on an actual expense basis. Mr. Weintrob states, however, that his claim is for the difference between per diem rates and not for actual expenses. After examining the written record, we must agree with Mr. Weintrob. While an official at DLA recommended he submit a request for reimbursement on an actual expense basis, Mr. Weintrob replied that that was impossible since he had not obtained any receipts. He has consistently requested that his claim be evaluated in terms of the applicable per diem rates and we shall do so.

The per diem rates issued by the Committee are based on the Per Diem Supplements found in the Standardized Regulations (Government Civilians, Foreign Areas) of the State Department. It is the State Department that sets rates of per diem payable to civilian employees traveling in foreign areas on Government business. This is explained in the Introduction to, and in paragraphs 2 and 3 of Appendix A of 2 JTR.

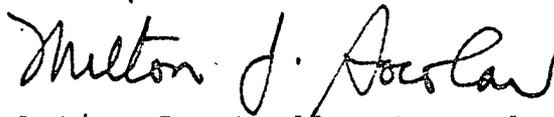
By Per Diem Supplement 181, issued in June of 1979, the per diem rate for Heidelberg was changed from \$68 to \$48, effective June 1, 1979. Since the

B-198399

entitlements found in Appendix A of 2 JTR are merely copied from the State Department's Standardized Regulations (Government Civilians, Foreign Areas), the new rate for Heidelberg operated prospectively from June 1, 1979, and not retroactively from September 1, 1979, as Mr. Weintrob claims. See B-173927, October 27, 1971. The fact that Mr. Weintrob did not have any notice of the new reduced rates is unfortunate. However, we have consistently held that amendatory regulations changing the per diem rates have the force and effect of law and are applicable even when the employee has no notice of the changed rates. See 56 Comp. Gen. 425 (1977); Carl W. Kaufman, B-182324, July 31, 1975.

Nothing in either the relevant Per Diem Supplements or 2 JTR indicates that an error had been committed in stipulating a \$48 per diem rate for Heidelberg for the period of June 1, 1979, to October 1, 1979. (The rate change, effective October 1, 1979, raising Heidelberg's rate to \$72 was based on Per Diem Supplement 185 issued in October 1979.) Nor is a change in 1 JTR relevant here since it applies only to uniformed members of the Armed Forces.

Accordingly, we must deny Mr. Weintrob's claim for an additional per diem allowance.



Acting Comptroller General
of the United States