

DECISION



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

118249

FILE: B-204185

DATE: April 27, 1982

MATTER OF: Michael Yanak - Temporary Quarters  
Subsistence Expenses - Reconsideration

DIGEST: The Department of Labor asks whether, under our decision Michael Yanak, B-204185, December 15, 1981, Mr. Yanak is entitled to be reimbursed for temporary quarters subsistence expenses in an amount not to exceed \$75 per day. Even though his temporary quarters were located in a high rate geographical area, the payment of \$75 per day would contravene the computational provisions of paragraph 2-5.4c of the Federal Travel Regulations which provide that the amount which may be reimbursed for temporary quarters subsistence expenses shall be the lesser of either (1) the actual amount of allowable expenses incurred for each 10-day period, or (2) the amount computed for each 10-day period as a percentage of the "maximum statutory per diem rate" for the locality. Thus, the employee's entitlement to temporary quarters subsistence expenses is the lesser of the amount he actually incurred or the amount computed as a percentage of the \$50 maximum statutory per diem rate under paragraph 2-5.4c of the FTR. B-204185, December 15, 1981, modified accordingly.

The Department of Labor has asked this Office for a more precise explanation of the computation of temporary quarters subsistence expenses reimbursable under our decision Michael Yanak, B-204185, December 15, 1981. Specifically, the agency asks whether Mr. Yanak is entitled to be reimbursed for temporary quarters subsistence expenses in an amount not to exceed \$75 per day. We hold

that the payment of \$75 per day is impermissible since it would contravene the controlling computational provisions set out in paragraph 2-5.4c of the Federal Travel Regulations (FTR) (reprinted FPMR A-40, Supplement 1, dated September 28, 1981).

In the interest of clarification, it is appropriate to point out that under FPMR Temporary Regulation A-11, Supplement 11, dated September 26, 1980, the General Services Administration--acting under authority vested by 5 U.S.C. § 5707(a) (1976)--promulgated an increase in the maximum statutory per diem rate to \$50 per day, effective for travel performed on or after October 5, 1980. See FTR paragraph 1-7.2a (FPMR 101-7, September 1981). In contrast to the per diem rate the maximum statutory actual subsistence allowance was increased at the same time to \$75 per day.

Mr. Yanak was transferred in October 1980 from Pikeville, Kentucky, to Arlington, Virginia. Arlington is a designated high rate geographical area under FTR paragraph 1-8.6. In our prior decision we held that he was entitled to temporary quarters subsistence expenses under the particular circumstances involved. We also agreed with Mr. Yanak's contention that the correct per diem rate is \$75 per day. Upon reconsideration, we conclude that the latter holding is incorrect. Our decision B-204185, December 15, 1981, is modified accordingly for the reasons stated below.

Unlike other forms of official duty travel involving reimbursement of actual subsistence expenses, the amount of Mr. Yanak's entitlement to temporary quarters subsistence expenses is subject to a specific computational formula. Paragraph 2-5.4c of the Federal Travel Regulations states that the amount which may be reimbursed for temporary quarters subsistence expenses shall be the lesser of either (1) the actual amount of allowable expenses incurred for each 10-day period, or (2) the amount computed as follows:

"(1) For the first 10 days.

"(a) For the employee, a daily rate not in excess of 75 percent of the maximum

statutory per diem rate for the locality in which temporary quarters are located; and

"(b) For each member of the employee's immediate family, two-thirds of the daily rate established in (a), above."  
(Emphasis added.)

The FTR's formula for the second and third 10-day periods is based on the daily rate for the first 10 days.

The computation is based on the maximum statutory per diem rate for the locality in which the temporary quarters are located. The same question of the proper rate to be applied when the temporary quarters are located in a high rate geographical area was raised in William E. Addis, 55 Comp. Gen. 1337 (1976). We held that, since the claimant was involved in a permanent change of station rather than in temporary duty travel, he was entitled only to the per diem rate and not to the rate for the high rate geographical area. Thus, the \$50 per diem rate must be used as a basis for Mr. Yanak's entitlement, even though the temporary quarters may have been located in a high rate geographical area.

Accordingly, Mr. Yanak's entitlement to temporary quarters subsistence expenses, as authorized by our decision B-204185, December 15, 1981, should be the lesser of either the amount he actually incurred or the amount computed as a percentage of the \$50 maximum statutory per diem rate in accordance with paragraph 2-5.4c of the Federal Travel Regulations.

*Milton J. Fowler*  
for Comptroller General  
of the United States