

DECISION

25144
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-210755**DATE:** May 16, 1983**MATTER OF:** Rodney J. Gardner

DIGEST: Employee on extended temporary assignment lodged in a camp which he owned and claimed to hold as rental property. For the entire period of his temporary assignment, he claims per diem for lodging in an amount which he says is the minimum for which he would have rented his camp to sportsmen on a daily basis. Payment of his claim may not be authorized in the absence of clear and convincing evidence that the lodging would have been rented during the entire period covered by his claim, and then only for expenses occasioned by his temporary assignment.

This action responds to a request for an advance decision as to whether payment may be made on the claim of Mr. Rodney Gardner, a civilian employee of the Army Corps of Engineers, for payment of per diem for lodging on account of his having resided in his private camp during a temporary duty assignment. We find that the claim may not be paid on the basis of the present record.

Mr. Gardner's permanent duty station is at Waltham, Massachusetts, and his permanent residence is located in Topsham, Maine. He was assigned to temporary duty in Allagash, Maine, from April 26 to November 23, 1977. His travel order authorized per diem in accordance with the Joint Travel Regulations. Mr. Gardner states that during this temporary assignment he resided at a camp he owns in Allagash, and that during the period of his temporary assignment, his camp would otherwise have been rented to sportsmen for fishing and hunting at a rate of not less than \$16 per day. He explains that since the motel and restaurant nearest to the job site were 30 miles away at Fort Kent, Maine, it would cost the Government less to pay him to reside in his own camp at a rate of \$16 per day than for him to commute 60 miles

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round trip every day and take meals and lodging in commercial establishments. He, therefore, claims as lodging costs a total of \$3,312, at a rate of \$16 per day.

Citing Comptroller General decision, Matter of Silver, 56 Comp. Gen 223 (1977), the Army Corps of Engineers denied Mr. Gardner's claim for lodging on the basis that since he lodged at his own camp which was not purchased and maintained on account of his temporary duty assignment, he was not required to pay for lodging. The Corps further stated that per diem is designed to reimburse the traveler for allowable expenses incurred in the performance of official duty away from his permanent duty station, and not to confer upon him a gratuity or to reimburse him for allegedly lost income.

Per diem allowances are authorized by the provisions of 5 U.S.C. § 5702, for employees traveling on official business. The statutory provisions are implemented by chapter 1, paragraph 7, of the Federal Travel Regulations (FPMR 101-7, in effect at the time this claim accrued). The applicable regulations provided that per diem shall be established on the basis of the amount of expenses the traveler actually incurs for lodging. Federal Travel Regulations, paragraph 1-7.3c(1) and (2).

In Matter of Silver, cited above, we held that an employee who lodged in one of his two family residences while on a temporary duty assignment was not entitled to prorated mortgage, utility, and maintenance expenses as lodging costs. That holding is based on the fact that the employee did not incur the claimed expenses incident to his travel since he was obligated to pay these costs regardless of his temporary duty assignment.

In some instances, we have held that an employee who, while on temporary duty, lodges in a residence which he owns and holds as rental property, or which he acquired incident to a temporary assignment, may be paid lodging expenses based on prorated monthly interest, taxes, and utilities as costs occasioned by the

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temporary assignment. See, for example, Matter of Larrabee, 57 Comp. Gen. 147 (1977). However, where an employee claims such expenses on account of having lodged in rental property which he owns, he must provide clear and convincing evidence that but for his lodging there while on temporary duty, the residence would have been rented out at all times covered by his claim. Matter of Staton, B-201574, August 24, 1981

In this case the record contains no such evidence. Although the memorandum of the Finance and Accounting Officer to the Army Department Headquarters, dated August 29, 1980, mentions a statement which Mr. Gardner apparently provided with his reclaim voucher "indicating that his camp is licensed with the State of Maine for rental purposes," that information has not been submitted to this Office. Moreover, that statement or evidence of that fact alone would not constitute sufficient evidence to support a conclusion that the quarters would have been rented as claimed throughout the entire period of Mr. Gardner's temporary duty assignment.

Accordingly, on the basis of the record before us Mr. Gardner's claim may not be paid. If, however, he provides the Corps of Engineers with records showing that the property is held and used as a rental property and would have been rented during the entire period, his claim for lodging expenses occasioned by his temporary assignment may be considered for payment. However, the basis for computing these costs is not the rental price of the property, but rather a proration of his monthly interest, taxes, and utilities paid by the employee for the rental property in question. See Matter of Larrabee, 57 Comp. Gen. 147 (1977).

for Milton J. Aroslan
Comptroller General
of the United States