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DECISION



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

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FILE: B-213341

DATE: December 27, 1983

MATTER OF: Clarence E. Berg

DIGEST: Where Department of Defense employee lodged without charge in Government quarters at remote duty site in Alaska, because other lodgings were unavailable, his per diem was properly reduced under regulation requiring 50 percent reduction in locality per diem rate where employee lodges free of charge in Government quarters. The fact that the accommodations may not have met the Department's own standards of adequacy does not change their character as Government quarters or warrant payment at an unreduced rate of per diem to compensate for hardship that may have been occasioned by his occupancy of the particular quarters.

This action is in response to a request for reconsideration of a recent settlement by our Claims Group that denied Clarence E. Berg's claim for additional expenses incident to performing temporary duty at certain remote locations in Alaska. We conclude that the claim was properly denied.

Mr. Berg's claim relates to 172 days he spent on temporary duty during fiscal years 1980-1982 as a civilian employee of the Department of the Air Force. He contends that \$6,106 was improperly deducted from his per diem for his use of Government quarters in the course of his temporary duty assignments. Although he was exempt from the requirement otherwise imposed upon Department of Defense employees by paragraph C1055-1 of Volume 2 of the Joint Travel Regulations (2 JTR) to use Government quarters "when adequate Government quarters are available," he had no alternative on those occasions. Because of the remote location of the temporary duty sites alternative lodgings were unavailable. Since Mr. Berg used Government-contracted quarters at no charge, his per diem was reduced in accordance with 2 JTR paragraph C4552-3d. That paragraph provides that when Government quarters are available without charge to the traveler "the prescribed

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per diem rate will be 50 percent of the applicable overseas per diem locality rate for the area." The applicable per diem rate for the temporary duty location in Alaska was set at \$71 and the 50 percent reduction, therefore, resulted in a decrease of \$35.50 per day in Mr. Berg's per diem which, over the 172 days, totaled \$6,106.

Mr. Berg argues that the quarters he used did not meet Department of Defense standards of adequacy and, therefore, did not constitute Government quarters as that term is defined in Appendix D of the JTR. Therein "Government quarters" are defined as:

"* * * Sleeping accommodations in a facility * * * operated under U.S. Government control or supervision * * * or furnished by a Government contractor under the terms of a contract or on a complimentary basis. Government quarters include guest houses, officers clubs, operations hotels * * *. Standards of adequacy are prescribed by the Office, Secretary of Defense, and implemented by appropriate regulations of the Service concerned."

Since 2 JTR paragraph C4552-3d prescribes a reduction in per diem only when Government quarters are used, and since he believes that the lodgings he occupied were not Government quarters, it is Mr. Berg's position that he is entitled to per diem at the unreduced locality rate of \$71 per day.

For purposes of this discussion we will assume that Mr. Berg is correct in his assertion that the lodgings he occupied and for which the Government had contracted did not meet Department of Defense standards of adequacy. Their character as Government quarters is not affected, however, by their adequacy or inadequacy. The reference to "standards of adequacy" in the quoted definition of "Government quarters" relates to the determination of whether employees may be required to occupy otherwise available Government quarters as provided in 2 JTR paragraph C1055-1, discussed above. Under that regulation, the per diem allowance of an employee required to occupy "adequate Government quarters available" is reduced even when he does not occupy those quarters, but obtains commercial lodgings elsewhere. Matter of Vaughn, B-182715,

August 28, 1975. That reference does not affect the requirement of paragraph C4552-3d to reduce a traveler's per diem when he in fact occupies Government quarters.

Statutory authority for payment of per diem incident to official travel is contained in section 5702 of title 5, United States Code. Per diem is an allowance authorized in lieu of reimbursement of subsistence expenses on an actual expense basis. See 48 Comp. Gen. 75 (1968). We have long and consistently held that per diem payments should approximate actual out-of-pocket expenses as nearly as possible. Matter of Overseas Employees, B-191706, June 13, 1978, and 31 Comp. Gen. 264.

The quarters furnished to Mr. Berg were furnished free of charge and he used these quarters because he had no practical alternative. He does not claim that he incurred lodging costs that were not covered by the \$35.50 a day per diem he was reimbursed. Essentially he claims that he should receive additional per diem to compensate for the hardship he experienced in occupying less than adequate lodgings. We considered a similar claim in which the employee complained that the Government quarters, also in Alaska, had neither laundry nor shower facilities. Matter of Protts, B-195658, March 18, 1980. We stated in that case:

"* * * The fact that the camps did not have shower or laundry facilities does not provide a basis to overturn that determination (refusing additional per diem) since subsistence expenses are intended to cover additional expenses incurred as the result of an employee's temporary duty assignment and not to compensate an individual for inconveniences that may be occasioned by the travel. * * *"

This rule governs Mr. Berg's case as well.

Accordingly, Mr. Berg's claim must be denied and the settlement of our Claims Group upheld.

Harry D. Van Cleave
for Comptroller General
of the United States