

Dunn

28161

DECISION



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

FILE: B-213021

DATE: May 2, 1984

MATTER OF: Charles P. Boucher - Reimbursement of Meal Expenses - Reasonableness

DIGEST:

A Customs Service employee on temporary duty, in an actual subsistence expense status with a high rate geographical entitlement of \$75.00, claimed meal expenses of \$50.00 or more per day. Customs Service determined that these meal claims were exorbitant, based on agency guidelines requiring the claim for meal costs to be reasonable and the "Sales Marketing Management Survey of Selling Costs." The agency denial is upheld since there is no evidence that its guidelines were arbitrary and capricious or that the employee was required to spend more than the guidelines permitted due to unusual circumstances.

This decision is in response to an appeal filed on behalf of Mr. Charles P. Boucher by his authorized representative, Mr. Lawrence K. G. Poole, Assistant Counsel of the National Treasury Employees Union, Atlanta, Georgia. Mr. Boucher, an employee of the Customs Service, Department of the Treasury, is appealing the determination by his agency denying his claim for additional reimbursement for meals, which he incurred incident to temporary duty in Miami, Florida. For the following reasons, we concur in the determination reached by the Customs Service in disallowing Mr. Boucher's claim.

Mr. Boucher, who was assigned to the Customs Service South Central region, went to Miami from May 7 to December 20, 1982, for temporary duty. Mr. Boucher was authorized actual subsistence expenses, not to exceed \$75 per day. Mr. Boucher is reclaiming amounts relating to his meal expense for the period of May 7 to June 25, 1982, in the total additional amount of \$585.00. It is reported that Mr. Boucher consistently claimed meal expenses of \$50.00 or more per day during the period in question. However, the Customs Service reduced his reimbursement by \$585 reflecting the agency's decision to allow a maximum meal reimbursement of \$35 per day.

124080
028762

The Customs Service reduced Mr. Boucher's claim for reimbursement on the grounds that expenditure of the amounts claimed was not the action of a prudent person as required by the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR). The Customs Service reached this conclusion by applying the table of selling costs as reported in the 1982 "Sales Marketing Management Survey of Selling Costs," which indicated an appropriate guide figure for the Miami area of \$30.00 per day. The Customs Service elected, however, to increase Mr. Boucher's allowance to \$35.00 per day for meals. We note that the Customs Service allowance of \$35.00 represents approximately 46 percent of the maximum authorized actual subsistence rate.

An employee is entitled to reimbursement for only reasonable expenses incurred incident to a temporary duty assignment since travelers are required by paragraph 1-1.3a of the FTR to act prudently in incurring expenses. In applying this requirement to claims for reimbursement of various types of travel expenses, this Office has consistently held that it is the responsibility of the employing agency to make the initial determination as to the reasonableness of the claimed expenses. See, for example, Micheline Motter and Linn Huskey, B-197621, B-197622, February 26, 1981. Where the employing agency has made the initial determination of reasonableness, this Office will overturn the agency's determination only where our review of the evidence results in a finding that the agency's determination was clearly erroneous, arbitrary or capricious. Norma J. Kephart, B-186078, October 12, 1976. The burden is on the employee to prove that the agency's determination is defective. See 4 C.F.R. § 31.7 (1983).

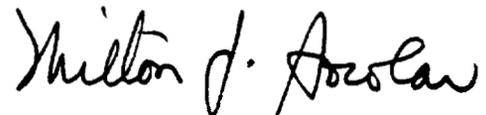
In Kephart, we suggested that agencies should consider issuing written guidelines, under the authority of paragraph 1-8.3b of the FTR, to serve as a basis for review of an employee's expenses. In Harry G. Bayne, B-201554, October 8, 1981, 61 Comp. Gen. 13, we approved as reasonable a guideline setting the maximum amount for meals and miscellaneous expenses as 46 percent of the statutory maximum, but stated that such a guideline could not operate as an absolute bar to payment of additional amounts when those amounts were justified by the employee on the basis of unusual circumstances.

Mr. Boucher's representative claims that the Customs Service disallowance was not reasonable for essentially three reasons. First, it is alleged that similar amounts for meals were paid to other temporary duty employees, and that on his arrival, Mr. Boucher was informed that the agency would pay these amounts for food. Therefore, it is argued that Mr. Boucher relied upon this past practice. Secondly, it is pointed out that Miami is in fact a very expensive area. Thirdly, Mr. Boucher's representative does not believe that the Customs Service has provided any basis to substantiate its disallowances.

We do not think it is unreasonable for the Customs Service to limit reimbursement for meals to approximately 46 percent of the maximum rate. See Bayne, cited above. The evidence submitted in support of Mr. Boucher's claim does not convince us that the Customs Service's determination was arbitrary or capricious. Rather it appears that the Customs Service made its determination according to a consistent agency standard based upon reasonable independent objective information. Nor does the evidence submitted show that Mr. Boucher was required by unusual circumstances to spend amounts he claimed so as to require the Customs Service to make an exception and reimburse him.

Also, the claim cannot be paid on the basis that officials of the Customs Service exceeded their authority by allegedly informing Mr. Boucher that he could expect to be reimbursed the amounts he subsequently spent for meals. The rule is well established that the United States can be neither bound nor estopped by the unauthorized acts of its agents. See Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947). Thus, it is clearly established that no administrative official can enlarge rights granted by statute and regulation by misinforming persons concerning their entitlement.

Accordingly, payment of the reclaim of Mr. Boucher is denied.



Acting Comptroller General
of the United States