

DECISION

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

FILE: B-217989

DATE: September 17, 1985

MATTER OF: Fraudulent Travel Voucher

DIGEST:

1. Federal agency determined that an employee had fraudulently claimed payment for lodging for 10 days during a temporary duty assignment. Based on evidence in the record indicating that the employee falsely claimed residence in a motel on those days, the agency has sustained its burden of proof on this issue, and the employee may not be allowed subsistence expenses for these days.
2. An employee may not receive travel per diem or subsistence expenses in the area of his official duty station. Thus, an employee recalled to his permanent duty station for medical reasons while on a temporary duty assignment may not be reimbursed for his subsistence expenses there, notwithstanding his contention that it was unsafe for him to return to his permanent place of abode at his duty station because of threats of mob violence.
3. Where an employee occupies non-commercial lodgings while on temporary duty he may not be reimbursed for amounts paid his host based upon an amount calculated on the basis of charges for comparable lodgings. In the absence of evidence of the expenses incurred by the host, only the reasonable minimal daily amount established under agency regulation is reimbursable.

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An employee of the Federal Aviation Administration, Washington Air Route Traffic Control Center, Leesburg, Virginia, appeals our Claims Group's settlement concurring with the Department of Transportation's finding that the employee fraudulently claimed payment of motel bills during a temporary duty assignment in New York. The settlement also concurred in a finding that the employee was not entitled to subsistence expenses during a period he was returned to his official station during that assignment, and that he may be allowed only partial payment of his claim for expenses for noncommercial lodgings during that assignment. We sustain our Claims Group's settlement denying the employee's claim for additional amounts believed due, and we are requiring the recoupment of amounts previously allowed to him in connection with his occupancy of the noncommercial lodgings.

Background

During the Professional Air Traffic Controller Organization strike in August 1981, the Federal Aviation Administration (FAA) assigned many of its remaining air traffic controllers to temporary duty at those air traffic control centers which had the most severe manpower shortages. The subject employee, an air traffic controller in the Washington Center at Leesburg, Virginia, received such a temporary duty assignment to serve at the New York Air Route Traffic Control Center, Islip, New York. This assignment began on August 27 and ended on November 5, 1981. At issue are certain expenses he claimed on the travel voucher he submitted following the completion of the assignment.

The employee traveled from Washington to the New York Center on August 27, 1981. He indicated that he stayed at a commercial motel in Port Jefferson Station, New York, from August 27, 1981, to September 8, 1981. He claimed lodging expenses of \$425 based on the use of a motel each day during this 13-day period.

On September 9, and from September 14 to November 5, 1981, the employee indicated that he stayed at the home of another air traffic controller in Port Jefferson, New York, and that this controller rented

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him a room for \$45 per day for the 58-day period from September 9 to November 5, 1981.

Between September 10 and 14, 1981, the employee was recalled to the Washington Center for medical reasons. He claimed meal expenses at Washington for this period, as well as prepaid lodging at the home of the other controller in Port Jefferson.

The Inspector General's office investigation in the case of this employee revealed that the motel records showed payments of only \$105--not \$425, as the employee had claimed. The records also showed that the employee stayed at the motel on September 1, 2, and 8--and in a different room on the 8th than on the 1st and 2d--rather than continuously from August 27 to September 8, 1981, as claimed. The employee admitted filling out the motel receipts that he submitted with his travel voucher himself. He claimed, however, that he did this because the motel would not provide him with completed receipts. The investigation also revealed that, based on a survey of local real estate, \$10 per day was a reasonable maximum that would be paid for the type of accommodations the employee had in a private residence in the Port Jefferson area. Based on the investigative reports, the FAA disallowed the employee's claims for lodging at the motel from August 27 to 31, and from September 3 to 7, 1981, and his claims for lodging and for meals during his recall to the Washington Center. In addition, the FAA found that lodging expenses of \$45 per day in a private residence were unreasonably high, and allowed only \$10 per day for lodging during the period the employee claimed this lodging.

Also based on this investigation, the Regional Director of FAA proposed to suspend the subject employee for 30 days for falsification of official documents. After written and oral replies which challenged both procedural and substantive aspects of the proposed suspension, the Regional Director withdrew the proposed suspension. The employee then asked for a review of his monetary claims by our Office. Our Claims Group determined he was due no additional amounts, and he has requested further review and reconsideration.

The Fraudulent Motel Expense Claim

With respect to allegations of fraud concerning claims against the Government, we have expressed the view that:

"* * * the burden of establishing fraud rests upon the party alleging the same and must be proven by evidence sufficient to overcome the existing presumption in favor of honesty and fair dealing. Circumstantial evidence is competent for this purpose, provided it affords a clear inference of fraud and amounts to more than suspicion or conjecture. However, if, in any case, the circumstances are as consistent with honesty and good faith as with dishonesty, the inference of honesty is required to be drawn. * * *" Charles W. Hahn, B-187975, July 28, 1977.

The FAA administrative report concerning the employee contains a sworn statement from a clerk who worked at the motel. The clerk stated that the motel receipts that the employee submitted with his travel voucher were not accurate indications of the employee's actual lodgings. According to the clerk, the employee stayed at the motel on September 1, 2, and 8, 1981, not August 27 to September 8, 1981, as claimed. The report also contains an affidavit from another air traffic controller stating that this employee was living in the New York Center and sleeping on a cot during part of the period he claimed he was residing at the motel. We find that this evidence establishes a clear indication of fraud.

The FAA's withdrawal of the proposed suspension of the employee is not dispositive of the employee's claim for travel expenses. We have held that where differing standards of proof apply, a prior action is not dispositive of a later recoupment action. Thus, an acquittal on criminal charges does not preclude a subsequent recoupment action. 60 Comp. Gen. 357 (1981). Here, we do not find that the withdrawal of the proposed

suspension is a sufficient basis for allowing the employee payment on his evidently fraudulent claim.

A fraudulent claim for any subsistence item taints all claims for subsistence for the entire day. See, generally, 57 Comp. Gen. 664 (1978); and B-196364, January 6, 1981. Since we have found that the employee fraudulently claimed motel expenses for the period of August 27-31 and September 3-7, 1981, we therefore conclude that he may not be allowed the subsistence expenses claimed for these 10 days, nor the mileage allowances claimed for travel between the motel and the New York Center during those days.

Subsistence Expenses During Recall

We have consistently held that, absent statutory authority, an employee may not be paid travel per diem or actual subsistence expenses at his permanent duty station. This is so regardless of unusual circumstances or working conditions. Philip Rabin, 64 Comp. Gen. 70 (1984). Here, the employee claimed subsistence expenses at his permanent duty station because he felt it was unsafe for him to return to his home due to the potential danger posed by striking air traffic controllers. Nonetheless, we know of no authority for paying claims for subsistence on that basis. Accordingly, the employee's claim for subsistence expenses during his medical recall to the Washington Center may not be paid.

Prepaid Lodging During Recall

A Federal employee may generally be reimbursed for prepaid rent in cases involving unexpected interruptions of temporary duty assignments. See Snodgrass and VanRonk, 59 Comp. Gen. 609 (1980). Where prepaid lodging costs are incurred unreasonably, however, an employee may not be reimbursed for them. See Jeffrey Israel, B-209763, March 21, 1983. We do not find that the subject employee's incurring charges of \$45 rent per day at the residence in Port Jefferson, New York, during his recall to the Washington Center was reasonable. Further, it does not appear that "prepaid" rent was actually involved. This claim, therefore, may not be paid.

Reasonableness of Lodging Costs in a Private Residence

When an employee stays in noncommercial lodgings for which he is entitled to reimbursement of his actual expenses, he must show not only that the costs claimed were paid but also that the payment was reasonable in the circumstances. This rule applies to payment of per diem under the lodgings plus system, 55 Comp. Gen. 856 (1976); reimbursement of actual subsistence expenses in a high rate geographical area, Gloria Dale Lewis, B-195609, December 5, 1979; and payment of temporary quarters subsistence expenses, 52 Comp. Gen. 78 (1972). Further the rule applies to noncommercial lodgings whether obtained from a friend, relative, fellow employee or mere acquaintance. William J. Toth, B-215450, December 27, 1984; Herman Zivetz, B-213868, July 12, 1984.

Further, in order to be reimbursable, the amount paid to the supplier of noncommercial quarters must reasonably reflect the added expenses to that individual and not be determined on the basis of comparative cost of commercial quarters. 52 Comp. Gen. 78, 80, supra; 55 Comp. Gen. 856, 858, supra.

The fact that receipts were given to the claimant for the full \$45 per day will not justify reimbursement because the giving of receipts when not in the course of a normal business transaction does not demonstrate that the payment was required or that it was reasonable in amount in view of the added expenses of the supplier of the quarters. Herman Zivetz, B-213868, supra; William J. Toth, B-215450, supra.

The amount fixed by the agency--\$10 per day--was determined by comparison to the advertised cost of similar accommodations in private homes. As indicated in the cited cases, that method is not authorized to fix appropriate reimbursement for the occupancy of non-commercial quarters. Rather, the employee must demonstrate the added costs incurred by the individual who supplied the quarters. Gloria Dale Lewis, B-195609, supra; 52 Comp. Gen. 78, supra. This is the maximum amount which may be allowed. However, since the agency regulations authorized a daily allowance of \$5 in these

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circumstances, we would not object to payment on that basis assuming that costs of at least this minimal amount were incurred. Since the employee has not demonstrated that his host incurred added costs in excess of this minimal amount by virtue of his occupancy of a room in his residence, lodging costs allowable for the period September 15 through November 5, 1981, should not exceed \$5 per day.

Summary

All actual subsistence and mileage claims for August 27-31 and September 3-7, 1981, should have been disallowed as part of a fraudulent claim. Subsistence and lodging costs for the period the claimant was returned to his permanent duty station, September 9-14, 1981, should be disallowed because per diem or actual subsistence in lieu thereof may not be paid at an employee's permanent duty station. Furthermore, there is no indication that the employee was required to retain lodgings at his temporary duty station during the period of return to his permanent duty station. Amounts claimed for lodging costs in excess of \$5 per day for the period September 15 through November 5, 1981, should be disallowed in the absence of a showing of a greater cost incurred by the employee's host in furnishing him accommodations for that period.

The employee should be required to refund the amounts previously paid either as a travel advance or in processing settlements which are contrary to the conclusions stated herein.

Milton J. Jordan

Acting Comptroller General
of the United States