

**DECISION**



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

**FILE:** B-218988

**DATE:** March 12, 1986

**MATTER OF:** Harvey P. Wiley - Temporary Quarters  
Subsistence Expenses - Reasonableness of  
Meal Expenses

**DIGEST:**

A transferred employee reclaims amount of disallowed meal expenses incurred while occupying temporary quarters. The agency relied on its internal guideline stating that meal costs up to 45 percent of the daily maximum will be considered reasonable without further explanation. The employing agency has the initial responsibility to determine the reasonableness of expenditures for expenses claimed by employees while occupying temporary quarters. Where the agency has exercised that responsibility, GAO will not substitute its judgment for that of the agency unless the agency's determination is clearly erroneous, arbitrary, or capricious. Here, agency's determination is sustained in the absence of adequate justification by the employee for additional meal costs.

This decision results from the submission by the Chief, Accounting Branch, Public Health Service, Department of Health and Human Services (HHS), of the reclaim voucher of Harvey P. Wiley, an employee of the Food and Drug Administration, for an additional amount for meal expenses incurred while occupying temporary quarters. The amount claimed was deducted from his original voucher on the basis that his meal expenses were unreasonably high. Under the analysis which follows we uphold the determination of the Public Health Service.

Mr. Wiley was transferred from Peoria, Illinois, to Jefferson, Arkansas, on July 28, 1984, and he and his family were authorized temporary quarters subsistence expenses. When Mr. Wiley sought reimbursement of his expenses, the agency disallowed \$927.65 of his claimed

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\$2,660.14 for meal expenses for the 34-day period as excessive. The agency allowed only \$1,732.49<sup>1/</sup> for meal expenses on the basis that the employee and his family had exceeded the agency's internal guidelines which provide that 45 percent of the prescribed daily maximum for the cost of meals and miscellaneous expenses will be considered reasonable.

Mr. Wiley protested this reduction to the agency on the basis that: (1) his travel order did not specifically limit the dollar amount below the applicable per diem rate; (2) he was not informed that his meal expense reimbursement would be limited as proposed; (3) his meal expenses were within the bounds of the FTRs and recent cost data compiled by GSA which designates the Little Rock area as a high rate geographical area; and (4) he was not aware of and does not believe it was reasonable to expect him to have known of the agency policy limiting reimbursement for meals and miscellaneous expenses to 45 percent of the total subsistence expense claimed.

In response to Mr. Wiley's protest, HHS states that the employee is entitled to reimbursement only for reasonable expenses for meals and miscellaneous expenses. This is a reference to the "prudent person" standard set forth in the Federal Travel Regulations, FPMR 101-7 (September 1981) incorp. by ref., 41 C.F.R. § 101-7.003 (1984) (FTR), paragraph 1-1.3a requiring travelers to act prudently in incurring expenses. The agency also refers to Chapter 5-30 of the HHS Travel Manual (HHS Transmittal 80.01, October 15, 1980) which states the following:

"B. Limitation on Meals and Miscellaneous Expenses. Reimbursements claimed under the

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<sup>1/</sup> The agency subsistence expenses allowance of \$1,732.49 is based on the authorized allowance for Mr. Wiley, his wife, and son as set forth in paragraph 2-5.4c of the Federal Travel Regulations, FPMR 101-7, GSA Bulletin FPMR A-40, Supp. 10, effective November 14, 1983. These regulations provide for a per diem rate of \$50 for Mr. Wiley, and \$33.33 each for his wife and son for each of the first 30 days; and for days 31-34, \$37.50 for Mr. Wiley and \$25 each for his wife and son. The agency then applied its 45 percent cap to the total allowable for all three family members for the 34-day period of temporary quarters.

actual subsistence expense basis (including travel to designated high-rate geographical areas) normally will be allowed only to the extent determined to be reasonable. The daily cost of meals and miscellaneous expenses will be considered reasonable if they do not exceed 45% of the prescribed daily maximum." Emphasis added.

Under 5 U.S.C. § 5724a(a)(3), as amended, and implementing regulations contained at chapter 2, Part 5, of the FTR, a transferred employee may be reimbursed subsistence expenses for himself and his immediate family generally for a period of up to 60 days while occupying temporary quarters. These regulations authorize reimbursement only for the actual subsistence expenses incurred, provided they are incident to the occupancy of temporary quarters and are reasonable as to amount. FTR para. 2-5.4a. It is the responsibility of the employing agency, in the first instance, to determine that subsistence expenses are reasonable. Where the agency has exercised that responsibility, this Office will generally not substitute its judgment for that of the agency, in the absence of evidence that the agency's determination was clearly erroneous, arbitrary, or capricious. Jesse A. Burks, 55 Comp. Gen. 1107 (1976), affirmed and amplified on reconsideration, 56 Comp. Gen. 604 (1977). The evaluation of the reasonableness of amounts claimed must be made on the basis of the facts in each case. 52 Comp. Gen. 78 (1972).

In Norma J. Kephart, B-186078, October 12, 1976, we suggested that agencies should consider issuing written guidelines, under the authority of FTR para. 1-8.3b to serve as a basis for review of an employee's expenses. In Harry G. Bayne, 61 Comp. Gen. 13 (1981), we approved as reasonable a guideline setting the maximum amount for meals and miscellaneous expenses at 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 justified by the employee on the basis of unusual circumstances. We have stated that the purpose of establishing such guidelines is to alert employees to the fact that the agency has established a maximum amount that might be considered reasonable for meals. This is essentially what HHS has done in the present case.

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Hence, in this case, it is clear that HHS had authority to issue the guideline contained in Chapter 5-30 of its Travel Manual dated October 15, 1980, creating a presumption that 45 percent of the prescribed daily maximum for meals and miscellaneous expenses will be considered reasonable without further justification. However, we must emphasize that, while payment may normally be limited to 45 percent of the daily maximum, amounts in excess of that figure should be paid if adequate justification is submitted by the employee. The burden of proof is on the employee to prove the reasonableness of his meal and miscellaneous expenses exceeding 45 percent of the maximum per diem rate. An employee who wishes to be paid for meals and miscellaneous expenses above the limitation in the regulation must submit appropriate evidence. The employee may establish the reasonableness of the amount claimed through the use of standard statistical references, copies of menus from restaurants in the area, or any other means of proof acceptable to the agency.

In Mr. Wiley's case, no additional justification such as described above has been offered to provide a basis for payment of the additional amounts above 45 percent. Accordingly, absent further justification for the additional amounts, the agency's denial of Mr. Wiley's claim for the additional amounts spent for meals is sustained.

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