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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Edward C. Licht - Actual Subsistence Expenses -
Itemization of Meal Costs

File: B-227485

Date: November 6, 1987

DIGEST

An employee in a travel status in April and May 1984 was authorized reimbursement on an actual expense basis, and he claimed meal expenses in excess of the agency guideline permitting reimbursement up to 45 percent of the daily maximum per diem rate, as reasonable, without requiring further justification. The employee later reduced his claim to an amount equal to the 45 percent guideline, but again did not itemize his daily meal costs. The agency, recognizing that he had incurred some meal costs, reimbursed him less than 45 percent of the applicable rate. The employee claims additional reimbursement, arguing that since his revised claim did not exceed 45 percent of maximum per diem, he is not required to itemize or further justify his expenses. His claim may not be paid since paragraphs 1-8.5 and 1-11.5(b)(2) of the Federal Travel Regulations (FTR) require subsistence expense itemization to at least permit agency review. While written agency guidelines may authorize, as reasonable, subsistence reimbursement up to 45 percent of a maximum per diem rate, such guidelines do not supersede other requirements of law or statutory regulations. Therefore, we concur with the agency action to require the employee to comply with FTR requirements to support his additional claim.

DECISION

This decision is in response to a letter from Mr. Edward C. Licht. He is appealing our Claims Group settlement Z-2864340, March 31, 1987, which disallowed additional subsistence expense reimbursement to him incident to a temporary duty assignment. We sustain that disallowance for the following reasons.

BACKGROUND

Mr. Edward C. Licht, an employee of the Internal Revenue Service, Department of the Treasury, performed temporary

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duty travel in Miami, Florida, a high-rate geographical area, during the period April 29 through May 15, 1984, and he was entitled to reimbursement for subsistence on an actual expense basis. Following that travel, he sought reimbursement by listing on his travel voucher the varying costs paid daily for breakfast but a fixed \$15 each day for lunch and \$25 each day for dinner. The agency allowed, as reasonable, \$69 for his total breakfast expenses but disallowed his lunch and dinner expense claims for the reasons that (1) the expenses claimed exceeded 45 percent of the statutory maximum per diem allowable without supporting justification, and (2) he failed to itemize all his daily meal costs.

Mr. Licht then revised his subsistence claim downward to \$33.75 a day for all meals.^{1/} On review, his division chief approved, in addition to his itemized breakfast costs, \$6 a day for lunch and \$12 a day for dinner, for an average subsistence reimbursement of \$22.31 a day. Through a series of appeals culminating with the present action, Mr. Licht has attempted to persuade the agency and this Office that since the amounts claimed for meals no longer exceeded the 45 percent guideline, the expenses claimed automatically qualify as reasonable and he is entitled to be reimbursed without having to itemize or further justify his meal expenses. We disagree.

RULING

Under the authority of 5 U.S.C. § 5702(c), the regulations contained in Part 8 of Chapter 1, Federal Travel Regulations (FTR)^{2/}, authorize the reimbursement of actual subsistence expenses to travelers in high-rate geographical areas. Paragraph 1-8.5 of the FTR provides that claimed subsistence expenses "shall be itemized in a manner prescribed by the heads of agencies which will permit at least a review of the amounts spent daily for lodging, meals, and all other items of subsistence expenses." See also FTR para. 1-11.5(b)(2).

^{1/} This amount is 45 percent of the maximum daily rate (\$75) applicable to Miami, Florida, at that time.

^{2/} Incorp. by ref., 41 C.F.R. § 101-7.003 (1984). See FTR Supp. 8, Nov. 18, 1983. See also FTR Supp. 20, May 30, 1986, which now authorizes the payment of per diem in former "high-rate geographical areas" without itemization of meal expenses.

While employees are entitled to be reimbursed for subsistence under these provisions, they may only be reimbursed for reasonable expenses since they are required to act prudently in incurring expenses while on official business. Charles J. Frisch, B-186740, March 15, 1972. We have held that the employing agency is responsible, in the first instance, to determine what constitutes reasonable expenses for meals and that such evaluation of reasonableness must be made on the basis of the facts in each case. 52 Comp. Gen. 78 (1972). In Jesse A. Burks, 55 Comp. Gen. 1107 (1976), affirmed and amplified on reconsideration, 56 Comp. Gen. 604 (1977), we held that where the agency has exercised that responsibility, this Office will not substitute its judgment for that of the agency's unless the determination made was clearly erroneous, arbitrary or capricious.

In our decision in Norman J. Kephart, B-186078, October 12, 1976, we first suggested that agencies should issue written guidelines to serve as a basis for agency review of expenses. We also pointed out that such guidelines would also provide guidance to employees as well. In Harvey P. Wiley, 65 Comp. Gen. 409 (1986), citing to our decision in Harry G. Bayne, 61 Comp. Gen. 13 (1981), we approved as a reasonable exercise of agency discretion the establishment of a guideline alerting employees that 45 percent of the statutory maximum of per diem for subsistence expenses may be considered reasonable without requiring justification for expenditures. Nowhere have we stated or suggested that such a guideline supersedes specific requirements of law or statutory regulations. Clearly, the submission of a travel voucher which fails to identify the daily expenditure for meals and, thus, does not allow the agency to review those expenditures, does not satisfy the regulatory requirements so as to permit reimbursement. James L. Palmer, 56 Comp. Gen. 40 (1976). See also Eric E. Shanholtz, B-224688, June 8, 1987.

In the present case, the 45 percent guideline rule established by the Internal Revenue Service merely recognizes that where an employee complies with the regulatory requirements and itemizes his subsistence expense on a daily basis and where the sum of such itemization does not exceed 45 percent of the authorized rate of per diem, the claimed subsistence may be reimbursed as reasonable, without requiring additional justification. While Mr. Licht specifically itemized his daily cost of breakfast on his travel voucher, he failed to itemize his costs of lunch and dinner, claiming instead \$15 and \$25, respectively, for each day of his temporary duty. This does not satisfy the regulatory requirements of FTR paras. 1-8.5 and 1-11.5(b)(2). Palmer, cited above.

It is our view that the agency refusal in the first instance to reimburse Mr. Licht, absent itemization of actual expenditures, was neither unreasonable nor was it arbitrary or capricious. When he resubmitted his claim to the agency, he again failed to itemize those expenses. Therefore, since Mr. Licht has failed to provide any evidence that his actual meal costs were greater than the amount reimbursed, we will sustain our Claims Group's denial of his claim for additional subsistence expenses.

for 
Comptroller General
of the United States