

Sayre



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Marilyn L. Dean - Temporary Quarters Subsistence Expenses - Reasonableness of Meal Expenses

File: B-234768

Date: May 16, 1989

DIGEST

A transferred employee reclaims amount of disallowed meal costs incurred while occupying temporary quarters. In limiting the employee's claim, the agency relied on its internal guideline stating that an allowance of 45 percent of the maximum allowable amount of temporary quarters subsistence expenses for meal costs is considered reasonable, unless an acceptable explanation is provided by the employee which supports a higher amount. Here, the agency's determination is sustained in the absence of adequate justification by the employee for additional meal costs.

DECISION

This decision is in response to a request by Ms. Marilyn L. Bumgardner, Certifying Officer, United States Department of Health and Human Services (HHS), for our review of a disallowance of a portion of temporary quarters subsistence expenses (TQSE) for meal costs claimed by Ms. Marilyn L. Dean, an employee of the Social Security Administration. The amount claimed was deducted from Ms. Dean's original voucher on the basis that the meal expenses were unreasonably high. For the reasons discussed below, we uphold the determination of HHS.

BACKGROUND

Ms. Dean was transferred from Kansas City, Missouri, to Seattle, Washington, in July 1987 and she was authorized TQSE for herself and her husband. When Ms. Dean sought reimbursement of her expenses, HHS disallowed the portion of her meal expenses which exceeded 45 percent of the

045482/138688

maximum allowable amount for TQSE.^{1/} HHS relied on an internal guideline providing that an allowance of 45 percent of the maximum allowable amount of TQSE for meal costs is considered reasonable, unless an acceptable explanation is provided by the employee which supports a higher amount. The agency accepts Ms. Dean's contention that, because she and her husband rented temporary quarters without pots, pans, knives, forks, spoons or plates, they were forced to eat all their meals in restaurants.

HHS limited Ms. Dean's expenses to an average of \$33.75 per day for meals for her and her husband. Ms. Dean claims an average of \$40.66 per day for meals.

OPINION

Under 5 U.S.C. § 5724a(a)(3), and the implementing regulations contained in chapter 2, part 5 of the Federal Travel Regulations (FTR), a transferred employee may be reimbursed subsistence expenses for a period of up to generally 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. 2-5.4.a. 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, we will not substitute our judgment for that of the agency, in the absence of evidence that the agency's determination was clearly erroneous, arbitrary, or capricious. The evaluation of the reasonableness of amounts claimed must be made on the basis of the facts in each case. Harvey P. Wiley, 65 Comp. Gen. 409 (1986).

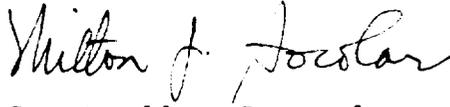
In Wiley, we held that HHS had authority to issue a guideline creating a presumption that 45 percent of the

^{1/} Originally, HHS applied a daily amount of \$29 for meals for Ms. Dean and her husband for the 31 days, August 18 to September 17, 1987, at issue in this decision. HHS based this amount on a daily maximum allowable amount of \$62.50 for TQSE and the 45 percent limitation. At that time, the amount reclaimed by Ms. Dean was \$361.50. After submission of this request, HHS recognized that, based on a change in the Federal Travel Regulations effective August 1, 1987, the correct daily maximum allowable amount for TQSE should have been \$75. HHS revised its daily amount for meals to \$33.75, thus, allowing Ms. Dean an additional \$147.25. Therefore, the amount at issue in this decision is now \$214.25.

prescribed daily maximum amount of TQSE for meals expenses will be considered reasonable without further justification. However, we emphasized 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. We stated that the burden of proof is on the employee to prove the reasonableness of the meal expenses exceeding 45 percent of the maximum allowable amount. An employee who wishes to be paid for meals expenses above 45 percent must submit appropriate evidence. We stated that an 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 our decisions, we have looked to the Runzheimer Meal-Lodging Cost Index, published by Runzheimer and Company, as a valid statistical reference for determining the reasonable cost of restaurant meals by city. In addition, we have stated that the experience of other employees under similar circumstances and any other unusual circumstances that might be relevant should be incorporated in the determination of the reasonableness of amounts claimed. See Eric E. Stanholtz, B-224688, June 8, 1987, 66 Comp. Gen. 512, and decisions cited therein.

Ms. Dean claims meal costs at an average of \$40.66 per day. The agency reduced the claim to \$33.75 per day based on the maximum allowable amount for TQSE and the 45 percent limitation. Ms. Dean argues that the claimed amount is reasonable because Seattle is a high cost of living area and there was no way for her and her husband to reduce their costs for meals in restaurants. Ms. Dean's argument fails to meet the burden of proof required of her because it is too general. She must submit specific evidence, such as described above, which would provide a basis to determine the amount claimed over the 45 percent limitation was reasonable in her case. In addition, Ms. Dean argues that, because she had to eat meals in restaurants, her situation is comparable to an employee on long-term temporary duty. She states that an employee on long-term temporary duty in Seattle for this period of time would have been allowed \$22 per day for meals and \$15 per day for meals for her spouse. This argument is flawed because an agency has no authority to reimburse an employee on long-term temporary duty for the costs of meals for their spouse. See Peter J. Dispenzirie, B-210244, Oct. 27, 1988.

Therefore, absent further justification for the additional amounts, the agency's denial of Ms. Dean's claim for the additional amounts spent for meals is sustained.

A handwritten signature in cursive script that reads "Milton F. Fowler".

Acting Comptroller General
of the United States