



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gregg Snyder

File: B-252836

Date: August 4, 1993

DIGEST

An agency assigned an employee to temporary duty within the same metropolitan area as the employee's official duty station and issued travel orders authorizing per diem. Later, after the duty was performed and expenses incurred, the agency determined that authorization of per diem was contrary to agency regulations and policy prohibiting per diem at a location within the vicinity of the employee's residence and refused payment on the employee's outstanding claims and began collection action on amounts already paid. Authorization of per diem under the circumstances was not specifically barred by the regulations but was within agency discretion. The authorization in the travel orders was an exercise of that discretion, and thus, the employee's travel orders were valid when issued, and valid travel orders may not be retroactively amended so as to increase or decrease the rights of employees.

DECISION

Mr. Gregg Snyder, a civilian employee of the Naval Research Lab (NRL), Department of the Navy, appeals our Claims Group settlement¹ denying his claim for the full per diem amount authorized in travel orders for two temporary duty assignments. We reverse.

BACKGROUND

Mr. Snyder lives in Waldorf, Maryland, from which he commutes daily to his permanent duty station in Washington, D.C. The NRL assigned him to two temporary duty (TDY) assignments, from November 15, 1989, through April 2, 1990, and August 13, 1990, through November 27, 1990, at the site of a contractor located in Tyson's Corner, Virginia, to assist the contractor to complete a high-priority program that had fallen behind schedule. The contractor was authorized to incur the expenses and the NRL received the bill for the expenses.

The officials who issued the travel orders authorized local mileage and full per diem for each assignment, including lodgings and meals, to allow Mr. Snyder to stay in a motel near the TDY location, rather than commute from Waldorf, because he was working extended hours and 7-day weeks at the TDY site. During the first of the two assignments, Mr. Snyder submitted his travel vouchers on a weekly basis and was paid in full by the NRL's travel office. The agency later determined that these orders were contrary to NRL regulations and policy and, on November 27, 1990, changed Mr. Snyder's orders to permit only a mileage allowance. Subsequently, NRL denied Mr. Snyder's outstanding claims for \$8,000 and sought repayment of \$12,574.81 already paid to him.

The agency determination was made on the basis that the TDY site was in the vicinity of Mr. Snyder's residence, and that the payment of per diem is barred by regulation.

Waldorf and Tyson's Corner are both in the greater Washington metropolitan area. According to the record, Mr. Snyder's residence is about 23 miles from the NRL duty station in Washington and about 44 miles from the TDY site in Tyson's Corner. Mr. Snyder's commuting time to the NRL averaged 30 to 45 minutes, while his commuting time to the TDY site averaged 60 to 75 minutes.

OPINION

per diem allowance may be authorized or approved by authorizing or authenticating officials for duty places outside the permanent duty station area.

As a general rule, legal rights and liabilities with regard to travel expenses vest when the travel is performed, and valid travel orders may not be revoked or modified retroactively so as to increase or decrease the rights that have become fixed after the travel has been performed. Wilson Barber Jr., B-241928, Feb. 7, 1991. However, travel orders may be amended or revoked to correct an error on the face of the orders or if the orders clearly are in conflict with a law, regulation or agency instruction. John A. Curtin et al., B-239413, July 3, 1991.

In this case, Mr. Snyder's travel orders had the appearance of valid, competent orders. They were signed by an associate superintendent, who had the authority to approve Mr. Snyder's travel, and contain no patent errors. At issue is whether the authorization of per diem in the orders was in conflict with a law, regulation or agency instruction.

We note that although he indicates that authorization of per diem was not in accordance with NRL policy, the NRL Commanding Officer recommends payment since Mr. Snyder incurred the expenses and the NRL received a benefit.

Section 5702 of title 5, United States Code, authorizes the payment of expenses for an employee "while traveling on official business away from his designated post of duty. . . ." The Federal Travel Regulations (FTR), which implement this section, provide at 41 C.F.R. § 301-7.5:

(a) No allowance at official station. A per diem allowance shall not be allowed within the limits of the official station . . . or at, or within the vicinity of, the place of abode (home) from which the employee commutes daily to the official station. Agencies may define a radius or commuting area that is broader than the limits of the official station within which per diem will not be allowed for travel within 1 calendar day.

The FTR defines an employee's official duty station as the corporate limits of the city or town in which the employee is stationed, which in this case is Washington, D.C. 41 C.F.R. § 301-1.3(c)(4). The term "vicinity" is not defined in the statutes, the FTR or any applicable agency regulations.

The agency-wide regulations for civilian employees of Defense Department components, including the Department of the Navy, are published as the Joint Travel Regulations (JTR). These regulations provide that "an appropriate per diem allowance may be authorized or approved by the order-authorizing or authenticating official" for TDY at nearby places outside the permanent duty station area. JTR Vol. 2, para. C4552(4) (Change 304, Feb. 1, 1991) (JTR, 21 Oct. 1984, Sept. 7, 1984).

A DOD Directive defines the Washington Local Commuting Area to include the corporate limits of Washington, D.C., and the surrounding counties in Maryland and Virginia, including both Charles and Fairfax Counties in which Waldorf and Tyson's Corner are located. DOD Directive 4525.14. This Directive also states that heads of DOD components shall use the directive to determine whether employees may be reimbursed for local travel when conducting official business.

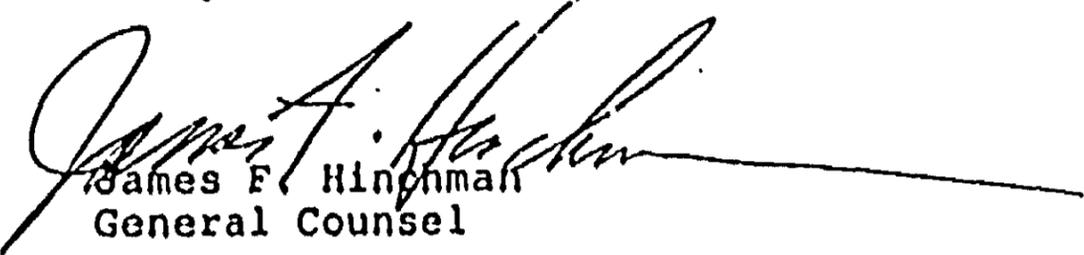
The NRL interpreted these directives to mean that "vicinity" and permanent duty station "area" are identical to the local commuting area. Therefore, since all travel in this case took place within the permanent duty station area, i.e. within the vicinity of Mr. Snyder's residence, Mr. Snyder has no entitlement to per diem. Our Claims Group concurred in this analysis.

Under the FTR and the JTR provisions, it is left to agency discretion to authorize per diem for TDY travel a short

distance from an employee's official duty station in appropriate circumstances, so long as the TDY site is not at or within the vicinity of the employee's residence. See e.g. Jon C. Geist, B-189731, Jan. 3, 1978. Where an agency has not specifically limited its discretion by regulation, we have recognized that it may, for example, authorize per diem in such circumstances where the employee's presence is required on a nearly continuous basis and the employee incurs the expenses for which per diem is payable to perform the duty. See Jon C. Geist, supra; and Joyce Price, B-228687, Dec. 5, 1988.

We see no basis for interpreting the term "local commuting area" in the DOD Directive as being synonymous with "vicinity" for the purpose of determining whether a TDY site is too close to an employee's residence to allow payment of per diem so as to preclude the authorization of per diem in Mr. Snyder's travel orders. Neither are we prepared to conclude that Tyson's Corner, 44 miles from Waldorf, is categorically within the vicinity of Waldorf. Thus, while in the judgment of higher level NRL officials, the associate superintendent should have authorized only a mileage allowance for Mr. Snyder to commute between Waldorf and Tyson's Corner, rather than per diem for lodging and subsistence at Tyson's Corner, his travel orders were properly authorized and Mr. Snyder has performed his travel and incurred expenses of over \$20,000. To now disapprove the per diem authorization would deprive Mr. Snyder of an entitlement that vested when he completed his travel. See Wilson Barber, supra; and Betty D. Gardner, B-214482, Nov. 23, 1984. treatment all over again at a cost of at least \$20,000.

Accordingly, the Claims Group's disallowance is reversed, and allowance of the claims for per diem is authorized to the extent otherwise proper.


James F. Hinchman
General Counsel