



Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

**Matter of:** Lieutenant General, U.S. Army (Retired) Robert D. Chelberg

**File:** B-258033

**Date:** November 8, 1994

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### DIGEST

Amendment to Standardized Regulations (Government Civilians, Foreign Areas), to permit reimbursement for temporary quarters subsistence allowance (TQSA) when an employee is also in receipt of per diem for official travel, may not be given retroactive effect so as to reimburse employee for TQSA incurred prior to the effective date. The regulation in effect prior to the amendment was promulgated by the Secretary of State pursuant to statutory authority and neither this Office nor any agency has the authority to waive it. Paul G. Thibault, 69 Comp. Gen. 72 (1989), distinguished.

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### DECISION

Lieutenant General, U.S. Army (Retired) Robert D. Chelberg, an employee of the Department of Defense, George C. Marshall European Center for Security Studies, claims reimbursement for temporary quarters subsistence allowance (TQSA) for the same period that he was on temporary duty and per diem was paid.<sup>1</sup> For the reasons that follow, General Chelberg may not be reimbursed for TQSA.

General Chelberg was appointed Deputy Director for the George C. Marshall European Center for Security Studies, Garmisch, Germany, with a reporting date of January 3, 1994. General Chelberg, who was not accompanied by dependents, resided in temporary quarters for which he was paid TQSA. During the period that he resided in temporary quarters, General Chelberg performed temporary duty on several occasions away from his official duty station in Garmisch, for which he was paid per diem. The Standardized Regulations (Government Civilians, Foreign Areas), in effect at the time General Chelberg traveled, specifically stated in § 127a (Feb. 21, 1993), that TQSA shall not be paid on behalf of any individual, employee or family member for any period during which travel per diem is payable on behalf of that individual. The Standardized Regulations were

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<sup>1</sup>The request was submitted by the Dean of Administration, George C. Marshall European Center for Security Studies, reference: ECMC-DA.

amended, effective March 6, 1994, and § 126.2 now provides that TQSA may continue during any period of official travel which authorizes per diem, provided the head of the agency has determined that the employee has acted responsibly in retaining temporary quarters during the period of official travel.

General Chelberg claimed reimbursement for TQSA for several periods involving temporary duty prior to the March 6, 1994, effective date in the regulation, and he was erroneously paid \$720 for a period of TQSA in January 1994 during which he performed temporary duty. He has claimed an additional \$720 for a subsequent period of temporary duty travel. The Secretary of State denied General Chelberg's request for reimbursement on the basis that a regulatory change may not be given retroactive effect.<sup>2</sup> The Dean of Administration, European Center for Security Studies, on behalf of General Chelberg, has questioned the State Department's denial because of a provision in 2 Joint Travel Regulations (2 JTR), § C13005-1a (June 1, 1992), which specifically authorizes temporary quarters subsistence expenses in addition to per diem for temporary duty, if the Department of Defense component concerned determines that the employee acted reasonably in retaining the quarters. The 2 JTR provision cites to a decision of the Comptroller General, Paul G. Thibault, 69 Comp. Gen. 72 (1989), for authority. In Thibault, we held that a provision of the Federal Travel Regulation (FTR) which prohibited duplication of allowances was not applicable where an employee acted reasonably and retained temporary quarters while on temporary duty and in receipt of a per diem. See, 41 C.F.R. § 302-5.2(i) (1993).

This Office has long held that the rights of an employee and the government become fixed under the applicable orders and regulations in effect at the time that the duty is performed and that such rights may not be changed by administrative action which would retroactively amend the employee's orders or change the applicable regulations. 47 Comp. Gen. 127 (1967); 33 Comp. Gen. 183 (1953); 33 Comp. Gen. 318 (1954); 33 Comp. Gen. 505 (1954). The only exception to the rule would be to correct obvious administrative errors. 56 Comp. Gen. 1015 (1977); Frederick A. Kalhammer, B-198930, Apr. 6, 1981.

In this case, the governing regulation pertaining to the payment of TQSA for government employees overseas is the Standardized Regulations promulgated by the Secretary of State, and 2 JTR is not applicable. Further, the Thibault decision, 69 Comp. Gen. 72, *supra*, did not involve the Standardized Regulation and it is distinguishable since it held that a general provision in the FTR pertaining to duplication of allowances was not applicable in the circumstances presented. In the present case, however, there was a provision of the Standardized Regulations in effect until March 6, 1994, specifically prohibiting reimbursement for TQSA when per diem was payable.

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<sup>2</sup>The Secretary of State has been delegated the authority of the President in 5 U.S.C. §§ 5911- 5928 (1988), to promulgate regulations providing for quarters and overseas differentials and allowances.

Since the provisions of the Standardized Regulations are promulgated by the Secretary of the State pursuant to statutory authority, they have the force and effect of law, and neither this office nor any agency may waive them. Accordingly, General Chelberg's request for reimbursement is denied, and any erroneous TQSA payments that he has received for a period prior to the effective date of the revised regulation should be recouped.

/s/ Seymour Efros  
for Robert P. Murphy  
Acting General Counsel