



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Bernel C. Thomas—Per Diem—Temporary Duty Near
Family Residence

File: B-256697

Date: August 23, 1995

DIGEST

An employee does not qualify under applicable travel regulation to receive per diem for temporary duty near his family residence, because he has not established that he meets the requirement that he regularly commuted to his permanent duty station from a location other than his family residence. Each claimant bears the burden of establishing his claim and government disbursing officers have a duty to deny claims that are not adequately supported. In this case, the claim is not adequately supported, and its denial, therefore, is sustained.

DECISION

Mr. Bernel C. Thomas, an employee of the U.S. Army Corps of Engineers, appeals our Claims Group settlement, Z-2868616, Feb. 23, 1994, denying his claims for additional per diem incident to temporary duty (TDY) he performed near his family residence between April 1986 and July 1989. We affirm the settlement.

BACKGROUND

Mr. Thomas's permanent duty station (PDS) is Port Allen, Louisiana, a suburb of Baton Rouge. He maintains a residence in Kenner, Louisiana, which is a suburb of New Orleans. Kenner is about 67 miles from Port Allen. Both are along Interstate 10.

During the period in question, Mr. Thomas performed a significant amount of TDY, much of it in the New Orleans area. The record does not disclose the number of days during this period that Mr. Thomas either reported to his PDS or was on TDY. However, Mr. Thomas traveled enough to justify the agency issuing him blanket

travel orders or repeated travel orders authorizing him to travel away from his PDS within certain geographical limits in the performance of his regular assigned duties.¹

The travel orders issued to Mr. Thomas authorized per diem "in accordance with JTR [Joint Travel Regulations], VOL II." For TDY he performed in the New Orleans area, he was paid per diem inconsistently, sometimes receiving the full rate, other times receiving a reduced rate, and in some cases receiving none. Upon further review, the agency determined that he was not entitled to any per diem when he performed TDY in the New Orleans area because it was in the vicinity of his residence at Kenner. As a result, the agency assessed a debt against him of \$920.25 for excess per diem. Mr. Thomas disputes the agency's position and claims additional per diem based on the full rate for each day he performed temporary duty in the New Orleans area.

Mr. Thomas asserts that his situation is similar to that of the claimant in our decision Durel C. Patterson, B-211818, Feb. 14, 1984, in which we allowed partial per diem (no lodging reimbursement) for an employee who stayed in his family residence at his TDY station. In that case the employee showed that while at his permanent station he lodged with his in-laws and commuted from their home to his permanent station. Mr. Thomas claims that he, similarly to the employee in the Patterson case, commuted to his permanent station from a friend's home in Baton Rouge or from a motel in Port Allen, and not from his residence in Kenner. To establish this fact, Mr. Thomas has submitted a memorandum dated December 16, 1991, from the friend,² asserting that he provided Mr. Thomas with temporary housing at no charge from June to August 1983, and periodically from April 1986 to August 1989 when Mr. Thomas was working in the Baton Rouge area. Mr. Thomas also submitted a receipt from a Port Allen motel for 2 days in September 1989.

The agency has questioned the documentation offered by Mr. Thomas and requested that he provide a notarized statement from his friend detailing the housing arrangement between the two of them, which he has not done.

¹The blanket travel orders authorized travel in 180-day increments from Port Allen to any point within the New Orleans District, and the repeated travel orders authorized travel in 60-day increments from Port Allen to a number of specified parishes.

²His friend is coincidentally the same Durel C. Patterson who is the subject of the above referenced 1984 General Accounting Office decision.

OPINION

The general rule is, "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." Federal Travel Regulations, 41 C.F.R. § 301-7.5(a).

An employee of a Department of Defense agency such as Mr. Thomas, who commutes to and from his or her permanent duty station from a location other than his family residence may receive a reduced per diem amount (food and miscellaneous expenses, but not lodging) when the employee stays at his or her family residence while on TDY. JTR, Vol. II, para. C4552m, Change 225, July 1, 1984. See also, Durel R. Patterson, supra.

Therefore, if Mr. Thomas regularly commuted to his permanent duty station in Port Allen from his family residence in Kenner, the general rule cited above would bar payment of any per diem to him for periods of TDY in the New Orleans area. However, if Mr. Thomas commuted regularly to his permanent duty station from a location in the Port Allen area, as he has claimed, he would be entitled under the JTR provision cited above to reduced per diem for days he was on TDY in the New Orleans area and lodged in his family residence in Kenner.

The burden is on the claimant to establish his entitlement to payment. 4 C.F.R. § 31.7 (1993). Where there is substantial doubt as to the validity of a claim, it is the duty of the government's accounting officers to disallow the claim and leave the claimant to his remedy in the courts. Thomas Cho, B-242848.2, July 6, 1992, footnote 3. The location from which an employee regularly commutes to work is a question of fact for the employee's agency and we will overturn an agency's determination of residence only upon a showing that it was clearly erroneous or inconsistent with the law. Thomas Cho, supra.

In this case, the receipt submitted by Mr. Thomas showing that he stayed in a motel at his PDS on 2 days of a 3-year period does not establish that he regularly commuted from that motel. Moreover, given Mr. Thomas's repetitive travel in the area and the 67-mile proximity between his family residence and his permanent station, we believe the agency was justified in not accepting his friend's statement as sufficient to support his contention that he regularly commuted from at the friend's residence to his PDS over the 3-year period in question.³ Therefore, we

³A complete showing by the employee in this case would include an indication of the extent to which he worked at his permanent duty station over the years in question and, for such periods of work at his PDS, evidence that he regularly
(continued...)

cannot say that the agency acted arbitrarily by asking Mr. Thomas for further evidence that he regularly commuted to his permanent station from some other location, or, in the absence of such evidence, that the agency's denial of Mr. Thomas's claim is erroneous.

Accordingly, the Claims Group's settlement denying the claim is affirmed.⁴

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

³(...continued)

commuted (or, in the words of JTR, Vol. II, para. C4552m, Change 225, "commuted each day") to his PDS from a location or locations other than his residence. Because the record as presented lacks this critical detail, we are unable to determine whether the requirements of JTR, Vol. II, para. C4552m, Change 225, are met.

⁴To the extent that the agency determines Mr. Thomas is in debt for erroneous per diem payments, such debt would be subject to consideration for waiver under 5 U.S.C. § 5584 and the implementing Standards for Waiver, 4 C.F.R. Parts 91-92 (1995).