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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-184006

DATE: November 14 1974

MATTER OF: George Avery - Retroactive Adjustment of
Subsistence Allowance

DIGEST: Employee who forfeited prepaid rent as result of termination of temporary duty due to illness is not entitled to reimbursement in excess of per diem, since the per diem may not be supplemented by additional payment to cover items otherwise included therein. Also, retroactive approval on actual expense basis is not proper since there is insufficient evidence to support conclusion that actual expenses are much more than per diem due to unusual circumstances.

This action is in response to a letter from George Avery of Millersburg, Kentucky, requesting reconsideration of our Transportation and Claims Division's (now Claims Division) settlement of Claim No. 2-2550101 dated March 18, 1975. The settlement denied reimbursement of prepaid rent which the claimant had forfeited as the result of the termination of his temporary duty assignment.

Pursuant to a travel order dated October 24, 1973, Mr. Avery was assigned to temporary duty at Fort Hood, Texas, for a period of 180 days. A per diem allowance of \$25 was authorized. As the result of an injury to Mr. Avery's back, the temporary duty was terminated by travel order dated January 3, 1974, and the claimant immediately returned to his permanent duty station. Due to the absence of an opportunity to give the required 15-day notice prior to vacating an apartment at his temporary duty station, Mr. Avery forfeited \$185 pursuant to the rental agreement. The record indicates that the total rent paid under the agreement was \$1,005.50. Mr. Avery claims entitlement to reimbursement of the \$185 in addition to the per diem allowance of \$25 which was paid through January 3, 1974.

In similar circumstances this Office has allowed reimbursement for a forfeited rental damage deposit and forfeited prepaid rent. See B-174380, November 19, 1971. The basis for the cited decision was that per diem is intended to serve for all reimbursable subsistence expenses and consequently may not be supplemented by

additional payment to cover any subsistence item otherwise included in the per diem. The above decision was properly cited by the Transportation and Claims Division as the basis for disallowance of Mr. Avery's claim.

However, subsection 5702(c) of title 5, United States Code (1970), provides that an allowance of actual subsistence expenses may be authorized when the maximum per diem allowance would be much less than the amount required to meet the necessary subsistence expenses due to the unusual circumstances of the travel assignment. A change in authorization from a per diem allowance to an actual expense allowance is within an exception to the general rule that travel authorizations may not be retroactively modified. See B-164228, October 9, 1975, and B-164228, June 17, 1968. Accordingly, we will not object if the total amount of rent is prorated over the period the employee occupied the apartment and included as a portion of the employee's actual daily subsistence expenses provided that the employee acted reasonably in securing lodging for an extended period and approval on an actual expense basis is obtained in accordance with the other applicable regulations. See B-138032, January 2, 1959.

Paragraph 1-1.3a of the Federal Travel Regulations (FPMR 101-7) (May 1973) provides that, "an employee traveling on official business is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business." A person assigned to a duty station for a period of 180 days would be acting in a prudent manner if he secured lodging for an extended period, even if that involved the possible forfeiture of rent in the event that the period of stay was reduced due to unexpected occurrences. Indeed, paragraph 1-7.3d of the Federal Travel Regulations (May 1973) provides that per diem rates shall be adjusted downward for travel assignments involving duty for extended periods at temporary duty stations where travelers are able to secure lodging at lower costs. In retrospect, the reasonableness of the employee's action in entering the rental agreement is evident since the total rent including the forfeited amount appears to be substantially less than the cost of lodging if secured on a daily basis.

Nevertheless, the use of the actual subsistence expense basis is not permitted where necessary subsistence expenses may exceed the maximum per diem allowance by only a small amount. See

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FTR para. 1-8,1b (May 1973). Thus in making the determination to authorize reimbursement on an actual expense basis, the agency must consider whether the actual costs exceed the per diem rate to such an extent that a change to an actual expense basis is warranted. In the instant case there is not sufficient evidence to support a conclusion that the actual daily subsistence expenses incurred were much, if any, in excess of the authorized per diem. Any further evidence to support approval of actual expense reimbursement should be submitted to the Per Diem, Travel and Transportation Allowance Committee for its consideration. See Volume 2, Joint Travel Regulations, para. C8157.

Accordingly, on the present record, the claim is for disallowance.


Deputy Comptroller General
of the United States