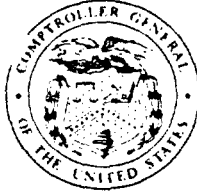


DECISION

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

FILE: B-185287

DATE: JUL 23 1976

61196
97868

MATTER OF:

Harold Bromel - Per diem while on sick leave -
Excess baggage charges

DIGEST:

1. Although employee was authorized sick leave while in travel status overseas and he performed duty near sick leave point, he may not be allowed per diem during sick leave. Sick and annual leave was approved in April 1975, but sick leave was not used until May incident to employee's return to official station. Duty was requested after sick leave and before planned annual leave. Therefore, there is not sufficient evidence to support finding that medical treatment could not reasonably have been postponed until after completion of temporary duty assignment.
2. Traveler was authorized 22 pounds excess baggage and 175 pounds air freight. Instead of transporting portion of baggage by air freight, traveler hand-carried all baggage thus incurring costs for excess baggage in addition to 22-pound weight authorized. Since additional excess baggage charges do not exceed constructive cost of shipping baggage by air freight, reimbursement is allowable.

This decision is rendered at the request, dated August 21, 1975, of Herman E. Gary, authorized certifying officer, Department of Commerce. The questions presented are whether items on a reclaim travel voucher for 8 1/2 days of per diem while in a sick leave status and for excess baggage charges may be certified for payment.

The voucher was presented by Mr. Harold Bromel who was authorized travel from Washington, D.C., to Moscow, U.S.S.R., in

097868-097868

order to act as an exhibition manager for the Bureau of East-West Trade. Mr. Bromel was also authorized to travel to Finland, Austria, and Yugoslavia, in such order as officially necessary, to negotiate contracts for future exhibitions. In April 1975, Mr. Bromel received authorization for sick and annual leave. On May 10, 1975, he traveled by air from Moscow to Frankfurt, Germany, where he received treatment for a tumor on the back of his hand. The employee took authorized sick leave from May 11 to May 19. On May 19 the employee traveled to Munich, Germany, for 2 days of official duty. He then took annual leave from May 21 until his arrival in Washington, D.C., on June 10. During this period he traveled from Munich to London and then to New York before returning to Washington. Per diem for the period of sick leave was disallowed administratively because the stopover was for consultation and does not conform to the Federal Travel Regulations.

Paragraph 1-7.5b of the Federal Travel Regulations (FPMR 101-7, May 1973), which implements 5 U.S.C. § 5702(b), provides in pertinent part as follows:

"b. Illness or injury.

"(1) Continuation of per diem.

Whenever a traveler takes leave of absence of any kind because of being incapacitated due to his illness or injury not due to his own misconduct, the prescribed per diem in lieu of subsistence, if any, shall be continued for periods not to exceed 14 calendar days (including fractional days) in any one period of absence unless, under the circumstances in a particular case, a longer period is approved.

* * * * *

"(4) Return to official station due to illness or injury. Per diem may be authorized or approved whenever an employee is returning to his official station because of illness or injury not due to his own misconduct which occurred while en route to

or while at temporary duty station prior to completion of temporary duty assignment. (See also 1-2.4.)"

In 49 Comp. Gen. 794 (1970) we stated that "[i]nherent in the law and its explanation is the concept that the absence from duty on account of illness or injury while in a travel status must be an absence over which the employee reasonably has no control." We further stated in the above-cited decision that per diem should not be paid "to an employee who chooses for reasons of personal convenience to hospitalize himself while in a travel status, but who reasonably would be expected to attend to his medical needs at his designated post of duty."

In the instant case the sick leave was authorized by the employing agency in April but was not used until May. We have been informally advised that Mr. Bromel stopped in Frankfurt incident to his return to Washington and that his official duty in Munich was requested since he was in the area on leave. After such duty Mr. Bromel took annual leave both in Europe and the United States before returning to his official station. Under the circumstances we do not believe that there is sufficient evidence to support a finding that the medical treatment could not reasonably have been postponed until after the completion of the temporary assignment. Cf. B-176956, December 14, 1972. Therefore, on the present record payment of the per diem may not be certified for payment.

The travel order authorized transportation of 22 pounds excess baggage for hand-carried baggage and 175 pounds for baggage by air freight. Mr. Bromel used the excess baggage tickets but did not use the authorized air freight since he hand-carried all his baggage. On his trip to Moscow, he incurred a charge in the amount of \$100.57 for 110 pounds of excess baggage transported from Helsinki to Moscow. On his return trip he incurred charges of \$81.97 for transportation of 66 pounds of excess baggage from Moscow to Frankfurt and \$44.63 for transportation of 42 pounds excess baggage from Munich to London. Mr. Bromel states that the air freight charge from Moscow to Washington was \$2.10 per pound. He feels that, although he did not ship the excess baggage by air freight, his claim is justified since an overall substantial savings resulted in favor of the Government.

B-185287

The cost of transporting baggage weighing 110 pounds from Washington to Moscow by air freight at the rate specified by Mr. Bromel would have been \$231. Since the cost actually incurred in transporting the baggage from Washington to Moscow (\$100.57) does not exceed the constructive cost of transporting the baggage by air freight (\$231), the excess baggage charge incurred on the trip to Moscow may be reimbursed. With respect to the return trip, the cost of transporting 66 pounds of baggage by air freight would have been \$138.60. Since the costs actually incurred on the return trip ($\$81.97 + \$44.65 = \$126.62$) do not exceed the constructive cost of transporting the baggage by air freight (\$138.60), the excess baggage charges for the return trip may also be reimbursed.

The voucher, if otherwise proper, may be certified for payment in accordance with this decision.

R. F. Keller

Deputy Comptroller General
of the United States