

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES 1455
WASHINGTON, D. C. 20548

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JUL 29 1976

FILE: B-185374

DATE:

MATTER OF: Per Diem for Temporary Duty En Route to First
Official Duty Station

DIGEST: Employee of Department of Defense was not authorized per diem during period of training prior to reporting to first official duty station because of agreement between personnel and finance officers not to pay per diem to employees whose residence was less than 50 miles from training site. Subject employee resided 18 miles from training location. Decision not to authorize per diem was proper exercise of agency discretion in light of continuing policy that per diem is to be paid only where necessary to cover increase in expenses of employees arising from temporary duty.

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This matter arises from a request for an advance decision, submitted by a Special Disbursing Agent of the Department of Defense, concerning the authority for denying per diem to a newly appointed employee, during a period of temporary duty training, en route to his first permanent duty station. The submission was forwarded through the Per Diem, Travel, and Transportation Allowance Committee, and was assigned PDTATAC Control No. 75-33.

The subject employee was a new appointee, whose first permanent duty station was overseas. Prior to traveling to that duty station he was required to undergo approximately 30 days temporary duty for training and orientation. His travel orders specified that travel involved in the temporary duty was to be at no expense to the Government. The employee learned that other individuals undergoing the same training and orientation, and destined for the same duty station, were paid per diem during the period of temporary duty. He has now submitted a voucher for the appropriate amount of per diem.

During the investigation relating to the claim voucher, it was learned that the decision not to pay per diem was based upon a 1968 memorandum of understanding between the cognizant personnel and finance offices, that provided that all employees

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undergoing the training and orientation prior to leaving for their overseas duty stations, would be paid per diem, except for those whose actual residence was within a 50-mile radius of the site of the temporary duty station. The actual residence of the employee in the instant case was 18 miles from the temporary duty station.

The first question posed by the submission is, whether the restrictive provision in the memorandum of agreement is in conflict with paragraphs C1050-2 and C1050-3, of Volume 2 of the Joint Travel Regulations (JTR)? The question is posed in light of paragraph C3006 of Volume 2 of JTR, which provides, in pertinent part, that:

"Except for persons selected for appointment to a duty station overseas or to a shortage occupation, a new appointee will bear the expenses of travel and transportation in reporting to a first duty station. A new appointee may be required to perform a temporary duty assignment at some place prior to reporting to the first permanent duty station. In such cases, he is not relieved from the personal expense of reporting directly to the first permanent duty station unless he is selected for appointment to a duty station overseas or to a shortage occupation position. A new appointee is entitled to additional transportation expense incurred because of the temporary duty assignment and to per diem while performing the assigned duties. * * *" (Change 93, July 1, 1973)

Paragraphs C1050-2 and C1050-3, provide that:

"2. EQUITABLE EXPENSE ALLOWANCE. Employees will not be directed to perform official travel at their own expense or at rates of allowances and amounts of reimbursement inconsistent with the provisions contained in this volume.

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"3. LIMITATION OF FUNDS. Limitation of available travel funds will not be a basis for denying reimbursement for official travel or reducing allowances." (Change 103, May 1, 1974)

In considering whether or not there is a fatal conflict between the restrictions of the memorandum of agreement of 1968 and the above sections of the JTR, it is important to remember the general instruction found in Federal Travel Regulations (FPMR 101-7) para. 1-7.3a (May 1973), that, "[i]t is the responsibility of each department and agency to authorize only such per diem allowances as are justified by the circumstances affecting the travel." It is also relevant to consider subparagraphs 3 and 4 of 2 JTR C8050 (Change 103, May 1, 1974), which provide that:

"3. PERMANENT DUTY STATION AREA. Except as provided in subpar. 7, per diem allowances are not authorized for travel or duty within a permanent duty station area.

"4. TEMPORARY DUTY AT NEARBY PLACES OUTSIDE THE PERMANENT DUTY STATION AREA. Per diem allowance will not be authorized when an employee does not incur additional subsistence expenses because of a temporary duty assignment in the vicinity of, but outside, the permanent duty station area regardless of whether or not travel begins or ends at his regular place of duty or his residence. Subject to the limitation in subpar. 8, and to the extent that additional subsistence expenses will be incurred, an appropriate per diem allowance may be authorized."

All of these provisions are consistent with the rationale of the Court of Claims in Bornhoft v. United States, 137 Ct. Cl. 134 (1956), where the court stated that:

"A subsistence allowance is intended to reimburse a traveler for having to eat in hotels and restaurants, and for having to rent a room in

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another city while still maintaining his own table and his own permanent place of abode. It is supposed to cover the extra expenses incident to traveling." (137 Ct. Cl. at 136.)

In accord with these provisions, we have held that there is no legal requirement that per diem be authorized during an assignment to a temporary duty station. B-171969.31, November 14, 1973. We have also held that it is within the discretion of an administrative agency to authorize or approve per diem, and it is not within the jurisdiction of this Office to question the propriety of an agency's decision to decline to authorize per diem. B-185195, May 28, 1976. In the case most analogous to the instant case, B-173174, July 21, 1971, we did not question an agency's regulations regarding payment of per diem where the criterion for payment was the length of the commuting time from an employee's residence to the location of the training. In B-171969.31, supra, the criterion for payment of per diem was attendance at a temporary duty station that was more than 30 miles from an employee's residence or official duty station, and we held that this regulation was proper.

None of these cases relate to payment of per diem when an employee is en route to his first duty station, as in the instant case. However, we believe that the same rationale is applicable. In the case of a new appointee who has not yet reported to his first duty station, his actual residence can be viewed as analogous to his permanent duty station for purposes of determining his entitlement to per diem. We do not believe that a new appointee has a greater entitlement to per diem than a long time employee. Nor do we see a conflict between the restrictive provisions of the memorandum of agreement and paragraphs C1050-2 and C1050-3 of 2 JTR, in light of the overall and controlling directions of both FTR and JTR that no greater per diem than is required under the particular circumstances of each case should be authorized. There is nothing in the record before us to indicate that the employee involved incurred any greater expenses than he would have in normally commuting to and from work. Under these circumstances, we see no basis for disturbing the administrative determination that per diem was not payable for employees residing within 50 miles of the temporary duty station.

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In light of our answer to the first question, no response is required to the other issues raised.

R.F.KELLER

Deputy] Comptroller General
of the United States

SUBSISTENCE

Per diem

Training periods

Training site status

SUBSISTENCE

Per diem

Administrative determination

to provide

SUBSISTENCE

Per diem

Temporary duty

At or near home

OFFICERS AND EMPLOYEES

Training

Transportation and/or per diem

Administrative determination

CCD