

DECISION

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

FILE:

B-186809

DATE: JUL 27 1976

61213

98901

MATTER OF:

Somsak Chinvanthananond - Subsistence, per
diem, retroactive adjustment.

DIGEST:

Travel orders authorizing \$25 per diem, a prior maximum rate for travel within the United States, may be adjusted to \$33, a new maximum rate, since agency policy to pay maximum rate to persons attending a training program was not followed. Further, the official who authorized travel intended that maximum rate be paid.

This action concerns a request from Melvin L. Hines, an authorized certifying officer of the Department of State, as to the propriety of certifying for payment a voucher in the amount of \$344, representing the difference between per diem in lieu of subsistence previously advanced to Mr. Somsak Chinvanthananond for 43 days at the rate of \$25 per day and per diem at the rate of \$33.

Mr. Somsak's travel orders dated May 23, 1975 authorized travel between Bangkok, Thailand and Washington, D.C., and return to attend the Foreign Service Economic and Commercial Local Training Program. Although the Travel Expense Amendments Act of 1975, Pub. L. No. 94-22, 89 Stat. 84, was approved on May 19, 1975 to increase the maximum per diem allowance of not to exceed \$35 for travel within the continental United States, Mr. Somsak's travel orders authorized per diem at the rate of \$25 per day. It is explained that Foreign Service Institute intended to authorize the maximum per diem rate for all students in attendance at the Program. This intent was manifested in Mr. Somsak's telegraphic travel authorization from the Office of the Secretary of State to the American Embassy in Bangkok which reads: "Maximum travel advance should be provided by the post prior to departure at the rate of 25 dollars per day while in U.S." In light of the intent to approve the maximum rate, it is asked whether the amount of per diem allowed in the travel order may be retroactively increased to the amount permitted by the Travel Expense Amendments.

Although Mr. Somsak is an employee of the Department of State stationed in Thailand, per diem for his travel within the United States is governed by the Federal Travel Regulations (FPMR 101-7) (May 1973). See Department of State Standardized Regulations (Government Civilians, Foreign Areas) 033. The General Services Administration implemented the provisions of the Travel Expense Amendments by issuing Temporary Regulation A-11 effective May 19, 1975, to change FTR para. 1-7.2a, by requiring an agency to establish a per diem rate not to exceed \$33 per day.

Generally, travel orders may not be amended retroactively to increase or decrease rights or obligations already vested or fixed, except to correct errors apparent on the face of the authorization or to complete an order to show the original intent of the official who issued the order. Where, however, an agency regulation requiring the authorization of the maximum per diem rate was not followed, we permitted a retroactive adjustment of per diem to the applicable maximum rate. B-180970, November 7, 1974. In the present case there is a telegram to the American Embassy at Bangkok from the Secretary of State indicating his policy to pay the maximum per diem rate to all persons attending the Training Program. In these circumstances, the mere entry on the travel order of a lesser rate without some other indication to set a rate less than the maximum does not show an intent to pay such lower rate when, in fact, such rate was the immediately preceding maximum. Since the agency policy was not followed, and in light of the evidence in the record that the maximum rate was intended, we find an administrative error has occurred. Therefore, an amendment of the travel authorization to accord with agency policy may be made.

Accordingly, the voucher is returned and if otherwise correct, may be certified for payment.

R. F. KELLER
Deputy Comptroller General
of the United States