

DOCUMENT RESUME

03203 - [A2353487]

[Claim for per Diem for Temporary Duty]. B-188515. August 18, 1977. 6 pp.

Decision re: Nicholas G. Economy; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.
Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Social Security Administration.

Authority: (P.L. 94-22; 5 U.S.C. 5702). 5 U.S.C. 5704. F.T.R. (FPMR 101-7), para. 1-7.5, 6. F.T.R. (FPMR 101-7), para. 1-7.3. F.T.R. (FPMR 101-7), para. 1-7.2a. 51 Comp. Gen. 30. B-181294 (1976). B-139852 (1952). Social Security Administration Circular SSA.g:240-8, Part III-A-3.

A Federal employee appealed the denial of his claim for additional per diem for temporary duty. The employee who was headquartered at Baltimore and assigned to temporary duty at Rockville, Maryland, had no Baltimore residence. He could be paid per diem for only 4-3/4 days per week plus mileage for constructive weekend travel pursuant to agency regulation since the agency may require employees to return on nonworkdays to headquarters where no per diem may be paid. Since the agency determined that the employee would not commute daily to Baltimore, per diem was properly authorized. (Author/SC)

Haubert
Civ. Per.

03203
3487

DECISION



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

FILE: B-188515

DATE: August 18, 1977

MATTER OF: Nicholas G. Economy - Per Diem

- DIGEST:
1. Agency regulation provided that per diem may not be paid on nonworkdays to employees assigned to temporary duty between Baltimore, Maryland, and Washington, D.C. Employee headquartered at Baltimore and assigned to temporary duty at Rockville, Maryland, near Washington, relinquished Baltimore residence, and obtained lodgings in Chevy Chase, Maryland, during temporary assignment. Although employee had no Baltimore residence, he may be paid only per diem for 4-3/4 days per week plus mileage for constructive weekend travel pursuant to agency regulation since agency may require employees to return on nonworkdays to headquarters where no per diem may be paid.
 2. Employee headquartered at Baltimore, Maryland, was assigned to temporary duty for about 3 months at Rockville, Maryland. Employee relinquished residence in Baltimore and obtained lodgings in Chevy Chase, Maryland, at monthly rental of \$320, for duration of assignment. Since agency determined employee would not commute daily to Baltimore, per diem was properly authorized. Under lodgings-plus system \$11 per day lodging cost is allowed (\$320 divided by 30).

This action concerns an appeal by Mr. Nicholas G. Economy from the denial by our Claims Division of his claim for

B-188515

additional per diem for temporary duty performed as an employee of the Social Security Administration.

The record indicates that Mr. Economy, whose permanent duty station is Baltimore, Maryland, performed temporary duty at Rockville, Maryland, which is near Washington, D.C., from June 7, 1976, through September 4, 1976. At the beginning of the temporary duty assignment, he obtained lodgings in Chevy Chase, Maryland, for his personal convenience in order to be closer to the temporary duty worksite. For the first 30 days of temporary duty, Mr. Economy claimed \$844.75 for mileage expenses and per diem. In support of his claim, he submitted a travel voucher dated July 7, 1976, on which he stated "I have no residence, property or household in Baltimore or anywhere else other than lodgings at Apartment 1808-S, 4515 Willard Avenue, Chevy Chase, Maryland 20015." The employing agency initially denied Mr. Economy's claim on the basis of paragraph 1-7.6a of the Federal Travel Regulations (FTR) (FPMR 1:71-7, May 1973) which states that per diem may not be allowed an employee at his place of abode from which he commutes daily to his official station. However, the employing agency subsequently concluded that the claimant's Chevy Chase residence was not his place of abode from which he commuted daily to his official station in Baltimore. Based upon that determination, the agency allowed Mr. Economy's claim in the amount of \$283.25, representing \$6.75 for mileage and \$14 per day for 4-3/4 days per week, pursuant to Part III-A-2 of Social Security Administration Administrative Directives System Guide Circular (SSA Circular) SSA.g:240-3, dated July 1, 1975. The cited provision of the SSA Circular provides that for assignments between Baltimore and Washington, D.C., per diem is payable only during the period from 6 a.m. on Monday until the employee returns to his headquarters on Friday, and that no per diem is allowable for weekends and holidays. Mr. Economy's subsequent travel vouchers for the periods of July 8 through August 6, 1976, in the amount of \$630, and August 7 through September 5, 1976, in the amount of \$632.25, were approved on the same basis for \$294 and \$272.25, respectively.

Mr. Economy reclaimed the amounts previously suspended, and the matter was referred to our Claims Division for a resolution.

B-188515

By Settlement Certificate No. Z-2717169 dated May 2, 1977, the Claims Division determined that the agency action was correct and denied Mr. Economy's claim for further payment of per diem. The settlement pointed out that the employing agency had determined the lodgings-plus system was appropriate for computing the amount of allowable per diem. Accordingly, the settlement held that under FTR paragraph 1-7.3 (May 19, 1975), the maximum allowance for per diem would be \$14 covering meals and miscellaneous expenses since Mr. Economy maintained only one residence, therefore incurring no additional expense for lodging.

In appealing the Claims Division settlement, Mr. Economy claims payment of per diem for the 2-1/4 days per week which represent the period of time during which per diem was administratively considered not payable for weekends pursuant to Part III-A-3c of SSA Circular SSA.g:240-8. Mr. Economy's basis for requesting payment of that amount is that the denial of weekend per diem is predicated on an assumption that he would return to Baltimore for the weekend, whereas he in fact had no Baltimore residence to which he could return. In addition, Mr. Economy claims reimbursement of \$5 per day for lodgings on the ground that the cost of his apartment in Chevy Chase exceeded his previous rent in Baltimore by that amount.

The threshold issue concerning this appeal is whether Mr. Economy is entitled to a per diem allowance in any amount. Federal Travel regulations paragraph 1-7.6a provides that per diem in lieu of subsistence may not be allowed an employee either at his permanent duty station or at his place of abode from which he commutes daily to his official station. Thus, if the Social Security Administration had exercised its discretion to determine that Mr. Economy's Chevy Chase residence was his place of abode from which he commuted to his official station, Mr. Economy would not have been eligible for a per diem allowance. However, the employing agency concluded that the Chevy Chase apartment was not his place of abode from which he commuted to his permanent station. Accordingly, Mr. Economy is properly entitled to a per diem allowance.

A further issue which must be resolved in this case concerns the proper period of time each week for which per diem

B-188515

may be paid. As noted above, Mr. Economy was granted per diem for 4-3/4 days per week as prescribed by Part III-A-3 of SSA Circular SSA.g:240-3 for temporary duty assignment between Baltimore and Washington, D C. That provision states as follows:

"c. Conditions for reimbursement:

"(1) Receipts for lodging will be required when claiming reimbursement.

"(2) No per diem is allowed for weekends and holidays.

"(3) Per diem is allowable during the period from 6 a.m. on Monday until time of return on Friday."

Since the Circular remained in effect until October 3, 1976, when FPMR Temporary Regulation A-11, Supplement 3, was issued by the General Services Administration, the above provisions were in effect at all times relevant to this action. Federal Travel Regulations paragraph 1-7.5c (May 1973) provides that at the discretion of administrative officials, a traveler may be required to return to his official station for nonworkdays. Further, FTR paragraph 1-7.6a (May 1973) provides that per diem in lieu of subsistence may not be allowed at his permanent duty station. The effect of the above-quoted provision of the SSA Circular is to require an employee assigned to temporary duty between Baltimore and Washington, D.C., to return on nonworkdays to his headquarters, at which he may not be paid per diem. The above regulation is, therefore, a valid exercise of the discretion vested within the agencies by virtue of FTR paragraph 1-7.5c (May 1973). This Office has no authority to grant waiver of such a valid administrative regulation. 51 Comp. Gen. 30 (1970). Since the underlying authority for the granting regulation in this instance is the employing agency's authority to require an employee to return to his headquarters on nonworkdays, it is not material whether Mr. Economy maintained a residence near Baltimore because no

B-189515

per diem may be authorized at his headquarters. It thus appears that Mr. Economy may properly be paid per diem for 4-3/4 days per week pursuant to Part III-A-3 of SSA Circular SSA .g:240-8.

Concerning the rate at which the per diem allowance may be payable, section 5702 of title 5, United States Code, as amended by Public Law 94-22, May 19, 1975, provides that under regulations prescribed by the Administrator of General Services, employees are entitled to per diem allowance at a rate not to exceed \$35 per day. Implementing regulations appear in the Federal Travel Regulations (FPMR 101-7). As amended effective May 19, 1975, FTR para. 1-7.3c(i) provides that per diem shall be established on the basis of the average amount the traveler pays for lodging, plus a \$14 allowance for meals and miscellaneous expenses.

The record in this case establishes that Mr. Economy would not have obtained lodgings in Chevy Chase, Maryland, except for the temporary duty assignment, and that he reestablished his residence in Baltimore upon termination of the assignment. Thus, the quarters obtained in Chevy Chase did not constitute Mr. Economy's permanent residence, but in fact were merely temporary lodgings obtained for the duration of the temporary duty assignment. As evidenced by a cancelled check in the record, Mr. Economy paid \$320 per month for his apartment in Chevy Chase. Agency regulations implementing FTR para. 1-7.2a (May 19, 1976) provide for a lodgings-plus per diem rate not to exceed \$33 for travel to Mr. Economy's temporary duty station. Accordingly, Mr. Economy's per diem is for recomputation. Since Mr. Economy relinquished his Baltimore residence, we consider his rental of the Chevy Chase residence to be for his personal convenience as well as for use in connection with his temporary duty assignment. Therefore, we have divided the monthly rent of \$320 by 30 to obtain a daily lodging cost of \$11 and a per diem rate of \$25. B-181294, March 16, 1976.

Finally, we note that Mr. Economy was authorized to use his privately-owned vehicle for transportation not to exceed common carrier costs at the rate of \$.15 per mile. Although under FTR para. 1-7.5c (May 1973), the claimant's employing agency had the authority to require him to return to his headquarters on weekends, pursuant to 5 U.S.C. 5704 (1970), he is entitled to a payment of mileage for the trips which he would have made on such weekends not to exceed constructive per diem.

B-188515

Thus, Mr. Economy is entitled to a payment of mileage at the rate of \$.15 per mile for 12 round trips between Baltimore and Rockville, representing constructive weekend travel. B-139852, July 24, 1959.

In view of the above, the Claims Division settlement will be modified to permit payment of per diem at the rate of \$25 per day for 4-3/4 days per week while Mr. Economy was on temporary duty and mileage for constructive required weekend travel. Accordingly, settlement will issue in the amount found due.


Deputy Comptroller General
of the United States