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**DECISION**



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

**FILE:** B-190711

**DATE:** August 14, 1978

**MATTER OF:** Leighton E. Johnson - Claim for additional per diem and mileage incident to temporary duty

- DIGEST:**
1. Employee claims additional per diem allowance on basis that travel orders allegedly authorized rate of \$25 which was consistent with what other persons at same facility were paid. Although travel orders authorized only \$12 rate, JTR provided for a maximum rate of \$25, which could not be reduced unless such reduction was approved by the Per Diem, Travel and Transportation Allowance Committee. See JTR C8051(e)(2).
  2. Employee is not entitled to mileage from place of lodging to temporary duty station since agency did not authorize it and such authorization is within the agency's discretion upon consideration of the best interests of the employee and the Government.

This action is a request for reconsideration of a settlement of November 22, 1976, issued by the Claims Division of our Office, which denied, in part, the claim of Mr. Leighton E. Johnson, an employee of the State Military Forces-California (National Guard), Sacramento, California, for additional per diem allowance and mileage expenses incident to his temporary duty assignment (TDY) to attend a course in instruction at the Army Training School, Ft. Eustis, Virginia.

The facts of this case, according to the record, are summarized as follows. Travel Order number 1497, issued October 9, 1970, authorized Mr. Johnson approximately 34 days of TDY at the Army Training School. It was indicated in block 16 of these orders that per diem was authorized as prescribed by paras. C8051 and C8101, Volume 2 of the Department of Defense Joint Travel Regulations (JTR), which resulted in a stated rate of \$12. Thereafter, the Per Diem, Travel and Transportation Allowance Committee, the authority responsible for promulgating the JTR, issued Joint Determination, number 46-70, dated December 22, 1970, which was subsequently incorporated in the JTR by change number 65. The Joint Determination established specific per diem rates for employees attending training courses at various military installations effective January 1, 1971. The rate established for training courses at Ft. Eustis, Virginia, was \$21.

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Mr. Johnson was paid the \$12 per diem rate by the administrative office for the duration of his training course of approximately 101 days. However, by Settlement Certificate Z-2584712, November 22, 1976, *supra*, our Office held that Mr. Johnson should have been paid at the new increased rate of \$21 beginning January 1, 1971, in view of the Joint Determination referred to above.

Mr. Johnson has now filed a claim for the difference in per diem of what he received and the rate of \$25 for the entire period of his training assignment. In appealing this adverse determination the employee contends since "other persons attending schools during the same period of time and currently working at the same facility I do, received the \$25 a day."

Paragraphs C8101-2a and C8101-2i of Volume 2 of the JTR (change 60, October 1, 1970), in effect at the time of the travel, provided as follows:

"2. TRAVEL WITHIN THE CONTINENTAL UNITED STATES  
BY REGULAR SALARIED EMPLOYEES

"a. Per Diem Rates Within the Continental United States. A per diem rate of \$25 is prescribed for all travel and temporary duty within the continental United States of regular salaried employees, except as otherwise provided herein, or when a reduced per diem rate is prescribed under the provisions of par. C8051. The method of computing the allowable per diem will be as prescribed in Chapter 10, Part C.

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"i. Per Diem Rates at Certain Training Courses. Specific per diem rates are prescribed in Appendix C, Part III, which are applicable while attending training courses at designated locations. The rates are established in accordance with par. C8051-2e and authority contained in 5 U.S. Code 4109."

Paragraph C8051-2e, change 56, dated June 1, 1970, in effect at the time of the travel, provided that an appropriate rate of per diem not in excess of the maximum rate will be established for those employees attending a training course. However, the recommendation for the appropriate per diem rate was required to be submitted through the appropriate headquarters office to the Per Diem, Travel

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and Transportation Allowance Committee for approval and inclusion in Appendix C, Part III. Paragraph C8051-2e does not provide authority for the local Commanding Officer to independently establish a reduced per diem rate incident to attendance at a training course. During the period from November 8 to December 31, 1970, there was no prescribed reduced rate cited in Appendix C, Part III, pertaining to the aforementioned training course at the Army Training School, Ft. Eustis, Virginia. See B-172206, May 24, 1971.

In view of the above it appears that paragraph C8051, in effect during the period covered by the voucher here involved, prescribed a per diem in lieu of subsistence at a rate of \$25 per day for all temporary duty within the continental United States.

In our decision 49 Comp. Gen. 493 (1970), we held that regulations of the Defense Contract Audit Agency, Defense Supply Agency, providing for the payment of a per diem less than \$25 could not be given effect since they were not issued in accord with authority contained in the Joint Travel Regulations. We see no reason why that conclusion could not be applicable here. Accordingly, we are advising our Claims Division to issue a settlement in the amount found due for the maximum rate of per diem for the period of November 8 to December 31, 1970.

For the period January 1 through February 18, 1971, Mr. Johnson received a per diem rate of \$21 that was established in accordance with paragraph C8051-2e and authority contained in 5 U.S.C. § 4109 and are applicable as indicated in paragraph C10100-3b. There is no authority for our office to authorize a higher rate of per diem.

With regard to the claim for mileage expenses, in 32 Comp. Gen. 235 (1952), it was held that an employee may be reimbursed for travel from residence to temporary duty post, but that the decision is discretionary with the agency. In 36 Comp. Gen. 795 (1957) on p. 797, it was held that in using its discretion the agency should consider the interests of both the Government and the employee. Since the matter is a discretionary one, it is not within the jurisdiction of our Office to question the propriety of the refusal to authorize such expenses.

On the basis of the foregoing, that part of the settlement certificate date November 22, 1976, issued by our Claims Division which

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disallowed Mr. Johnson's claim for mileage expenses is hereby affirmed.

  
Deputy Comptroller General  
of the United States