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

FILE: B-191185

DATE: August 23, 1977

MATTER OF: Charles Feigenbaum - Per Diem - Designated
High-Rate Geographical Area

- DIGEST:
1. Employee of Civil Service Commission on temporary duty in San Francisco a designated high-rate geographical area, was authorized actual expenses of subsistence. Employee failed to itemize actual subsistence expenses and claims reimbursement on a flat-rate basis. Claim on a flat-rate basis may not be allowed since employee may not be reimbursed on per diem basis and voucher does not identify daily expenditures for meals so that such expenses may be reviewed by the agency to determine that they are proper subsistence items.
 2. Where employee was authorized subsistence on actual expense basis for temporary duty in San Francisco, designated high-rate geographical area, and fails to maintain daily record of subsistence expenses, his travel orders may not be retroactively amended to provide reimbursement on per diem basis. Travel orders may not be revoked or modified retroactively to increase or decrease rights that have accrued and become fixed under law and regulation except to correct error apparent on face of orders or when facts demonstrate a provision previously intended has been omitted through error or inadvertence. Record shows no such error or omission in orders.

This action is in response to a request from Mr. Douglas C. Graft, an authorized certifying officer of the Civil Service Commission (CSC) concerning the propriety of paying a per diem allowance in lieu of actual subsistence expenses to Mr. Charles Feigenbaum for temporary duty he performed in San Francisco, California, a designated high-rate geographical area, during the period June 19 to 22, 1977, as an employee of the CSC.

By Travel Authorization No. MB 1035, dated May 26, 1977, Mr. Feigenbaum was authorized actual subsistence expenses for his temporary duty assignment in San Francisco, California, a designated high-rate geographical area, at a daily rate not to exceed

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\$39 per day. When Mr. Feigenbaum submitted his travel voucher, he claimed \$35 a day per diem instead of his actual expenses for the time he spent in San Francisco. Mr. Feigenbaum explained to CSC that he did this because he was not aware that he was on an actual expense basis while in San Francisco and did not keep a record of his meal costs. Mr. Feigenbaum submitted receipts for his lodging costs for June 19, 20, and 21 with his original voucher and has been reimbursed only for these expenses. He then submitted a reclaim voucher for an amount representing the difference between his average daily lodging costs and \$35 a day per diem for the period June 19 to 22, 1977. Mr. Feigenbaum requests that his travel order be retroactively amended to provide for reimbursement on a per diem basis instead of an actual expense basis for the time he was in San Francisco. In response to this request, the certifying officer has asked for a decision with respect to the following questions:

- "1. May Mr. Feigenbaum's travel order be retroactively amended to provide for reimbursement on a per diem basis during the time he was performing temporary duty in a high-rate geographical area?
- "2. If his travel order may not be retroactively amended, are there any provisions under which he may be reimbursed for the cost of his meals without itemizing them?"

Section 5702(c) of title 5, United States Code (Supp. V, 1975), provides that, in accordance with regulations prescribed by the Administrator of General Services, an employee may be reimbursed for actual and necessary expenses of official travel when the maximum per diem allowance is determined to be inadequate for travel to high-rate geographical areas. The implementing regulations appear in the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973), as amended effective June 1, 1977. Temporary Regulation A-11, Supplement 4, amended the FTR to specifically provide that where travel is performed to a designated high-rate geographical area, a per diem allowance may be authorized by the head of an agency under FTR para. 1-7.3, provided the factors enumerated in para. 1-7.3a would reduce the employee's travel expenses. Paragraph 1-8.1b provides, in pertinent part, as follows:

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"b. Travel to high rate geographical areas. Actual subsistence expense reimbursement shall normally be authorized or approved whenever temporary duty travel is performed to or in a location designated as a high rate geographical area (see 1-8.6), except when the high rate geographical area is only an enroute or intermediate stopover point at which no official duty is performed. Agencies may, however, authorize other appropriate and necessary reimbursement as follows:

"(1) A per diem allowance under 1-7.3 if the factors cited in 1-7.3a would reduce the travel expenses of an employee provided the agency official designated under 1-8.3a(1) determines the existence of such factors in a particular travel assignment and authorizes an appropriate per diem rate * * *."

It is noted that the FTR provides that employees traveling to designated high-rate geographical areas shall normally be authorized reimbursement for actual subsistence expenses, but that under certain conditions not applicable here and on an individual basis, the head of the agency may authorize a per diem allowance.

In reply to the specific questions raised by the certifying officer and based upon the foregoing, the head of an agency may, under certain conditions, authorize payment of a per diem allowance in lieu of actual subsistence expenses for travel by agency employees to designated high-rate geographical areas in accordance with the regulatory provisions. Such determination should be made, however, prior to the time the travel commences and must be made on a case-by-case basis. Matter of Jack O. Padrick, B-189317, November 23, 1977; Matter of Norma J. Kephart, B-186078, October 12, 1976; Matter of John D. Sammon, B-184614, October 5, 1976; and Matter of Que Quigley, B-190329, February 9, 1978. The general rule is that travel orders may not be revoked or modified retroactively after travel has been performed so as to increase or decrease rights that have accrued and have become fixed under applicable law and regulation. B-176236, October 30, 1972. The exception to this rule is that travel orders may be amended to correct an error apparent on the face of the orders or where the facts and circumstances demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertence. Matter of H. D. Anderson, 57 Comp. Gen. 367 (1978).

In the instant case, inasmuch as Mr. Feigenbaum was authorized reimbursement for actual subsistence expenses incurred while on

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temporary duty in San Francisco rather than payment of a per diem allowance, reimbursement is to be made on that basis. There has been no error or omission in Mr. Feigenbaum's original travel order. Hence, Mr. Feigenbaum's travel order may not be retroactively amended to provide reimbursement on a per diem basis. Matter of H. D. Anderson, supra; Matter of Que Quigley, supra.

With regard to reimbursement of actual subsistence expenses, para. 1-8.5 of the FTR provides as follows:

"1-8.5 Evidence of actual expenses. Actual and necessary subsistence expenses incurred on a travel assignment for which reimbursement is claimed by a traveler shall be itemized in a manner prescribed by the heads of agencies which will permit at least a review of the amounts spent daily for lodging, meals, and all other items of subsistence expenses. Receipts shall be required at least for lodging."

Paragraph 1-8.3 of the FTR provides that agencies shall review actual expenses claimed by the traveler to determine whether they are proper subsistence items. An employee is responsible for maintaining a contemporaneous record of expenses incurred incident to official travel and for submitting a voucher itemizing such expenses. See FTR paras. 1-11.2 and 1-11.3.

In accordance with the above provisions, we have held that the submission of a voucher which does not clearly identify daily expenditures for meals is insufficient to allow computation of daily subsistence expenses so that such expenses may be compared to the daily maximum rate allowable. Matter of John D. Sammon, supra; B-116908, October 12, 1965. Since the rate of \$35 per day claimed by Mr. Feigenbaum for subsistence expenses is not an itemization of actual costs, but represents a per diem rate, his claim may not be allowed on the basis presented.

Accordingly, the reclaim voucher may not be certified for payment.


Deputy Comptroller General
of the United States