

**DECISION**



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

**FILE:** B-194197 **DATE:** September 27, 1979

**MATTER OF:** Nicholas M. Veneziano } *Claim For* Actual Subsistence  
Expense } Status

**DIGEST:** 1. Employee, whose duty station is in New York City, traveled to high-rate geographical area, Newark, New Jersey, from his home in Brooklyn, New York. Period of travel was less than 10 hours and he is not entitled to reimbursement of \$2.75, cost of lunch incurred in Newark. Restriction in para. 1-7.6d(1) that per diem is generally not allowable for periods of travel of 10 hours or less in a calendar day has application to employee being reimbursed actual subsistence expenses for travel to a high-rate geographical area. See FTR para. 1-8.1a. E-184489, April 16, 1976, distinguished.

Mr. Nicholas M. Veneziano, an employee of the General Services Administration (GSA), has appealed our Claims Division's denial of his claim for actual subsistence expenses incurred incident to duty he performed in Newark, New Jersey, on July 20, 1977.

Mr. Veneziano, whose official duty station is New York, New York, and whose residence is in Brooklyn, New York, was ordered to perform official business in Newark, New Jersey, where he incurred the expense of \$2.75 for lunch. Citing decision B-184489, April 16, 1976, and paragraph 1-8.6 of the Federal Travel Regulations (FTR) (FPMR Temporary Regulation A-11, Supp. 4, Attachment A) (1977), Mr. Veneziano claimed reimbursement for lunch. The GSA denied his claim. Our Claims Division also denied Mr. Veneziano's claim on the basis that GSA did not authorize or approve reimbursement on an actual-expense basis. Mr. Veneziano points out in his appeal, however, that a travel voucher which he submitted has been signed by the approving officer.

LAW AND REGULATIONS

Section 5702c of title 5, United States Code (1976), allows for the payment of actual expenses as follows:

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"Under regulations prescribed under section 5707 of this title, the Administrator of General Services, or his designee, may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of official travel when the maximum per diem allowance would be less than these expenses, except that such reimbursement shall not exceed \$50 for each day in a travel status within the continental United States when the per diem otherwise allowable is determined to be inadequate (A) due to the unusual circumstances of the travel assignment, or (B) for travel to high rate geographical areas designated as such in regulations prescribed under section 5707 of this title."

Paragraph 1-8.1 of the FTR, FPMR Temporary Regulation A-11, Supp. 4, Attachment A (April 29, 1977), is the basic regulatory authority providing for actual expenses and it states:

"1-8.1 Authorization or approval.

"a. General. Authority for reimbursement of actual and necessary subsistence expenses incurred during official travel is normally contingent upon the entitlement to per diem (see 1-7) and the determination that the authorized maximum per diem allowance would be inadequate to cover the actual and necessary expenses of the traveler. A traveler may be reimbursed for the actual and necessary expenses of the official travel when the actual maximum per diem allowance otherwise allowable is determined to be inadequate due to the unusual circumstances of the travel assignment, or for travel to high rate geographical areas. Heads of those agencies defined in 5 U.S.C. 5701, or their designees (see 1-8.3), shall authorize or approve reimbursement for the actual and necessary subsistence expenses of a traveler incurred during official travel in accordance with the provisions of this part. (Underscoring of text supplied.)

"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. \* \* \*"

Paragraph 1-8.6 of the FTR, FPMR Temporary Regulation A-11, Supp. 4, Attachment A (April 29, 1977), upon which Mr. Veneziano relies, provides:

"1-8.6. Designated high rate geographical areas. Pursuant to the provisions of 1-8.1b and 1-8.2a(1), for temporary duty travel to or within the cities designated as high rate geographical areas below, a traveler automatically shall be placed in an actual subsistence expense status and shall be reimbursed for the actual and necessary subsistence expenses incurred not to exceed the maximum rate prescribed for the particular geographical area involved.

<u>Designated High Rate Geographical Areas</u>	<u>Prescribed Maximum Daily Rates</u>
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\* \* \* \* \*

"Newark, NJ (all locations within the corporate limits thereof)	\$42"
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There is also for consideration paragraph 1-7.6d(1) of the FTR which provides that "\* \* \* per diem shall not be allowed when the travel period is 10 hours or less during the same calendar day, except when the travel period is 6 hours or more and begins before 6 a. m. or terminates after 8 p. m. \* \* \*." There is no evidence that Mr. Veneziano's travel took place before 6 a. m. or terminated after 8 p. m.

#### ISSUE

The voucher submitted shows that Mr. Veneziano's luncheon expense has been approved by signature of the approving officer. The question, therefore, is whether the approving officer had

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the authority to approve the voucher under the above-cited law and regulations. If he did not have such authority the voucher may not be certified for payment.

Basically, Mr. Veneziano's argument is that since he traveled to a designated high-rate geographical area, Newark, he is automatically entitled to actual subsistence expenses he incurred in Newark. Further, even though his day's assignment and travel to Newark was completed within 10 hours, he cites B-184489, April 16, 1976, as support for the proposition that there is no bar to his receiving actual subsistence expenses under FTR para. 1-8.6.

#### OPINION

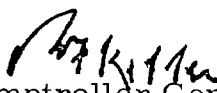
In decision B-184489, April 16, 1976, cited by Mr. Veneziano, we held that since the regulations pertaining to high-rate geographical areas did not contain special provisions for reimbursement of actual subsistence expenses for travel of 24 hours or less when no lodging is involved an agency could not set a per diem rate of \$24 or less for such travel to a high-rate geographical area. The regulations have since been amended so that a per diem rate may be set in a high-rate geographical area when circumstances warrant it. See para. 1-8.1b(1) of the FTR, FPMR Temporary Regulation A-11, Supp. 4, Attachment A (April 29, 1977).

We do not think it follows, however, that the absolute prohibition against the payment of per diem for travel of 10 hours or less found in FTR para. 1-7.6d(1) has no application to employees' travel to high-rate geographical areas. (The payment of actual expenses in high-rate geographical areas is normally contingent upon the entitlement to per diem. FTR para. 1-8.1a. Since per diem may not be allowed in cases of travel of 10 hours or less, actual expense reimbursement under Part 8 of the FTR is likewise limited.) Decision B-184489, April 16, 1976, is distinguishable since in that case we held that the per diem method of reimbursing an employee had no application to an employee's reimbursement when his entitlement was under the distinct actual-expense mode. This was later corrected by an amendment to the regulations. In the case at hand, however, there is an absolute bar on the payment

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of per diem for travel of 10 hours or less and this bar is applicable to the payment of actual subsistence expenses in like situations.

Even though Mr. Veneziano's voucher was duly approved, the approving official acted beyond his authority because actual subsistence expenses may not be paid for travel of 10 hours or less. Accordingly, the disallowance of the claim by our Claims Division is sustained.

  
Deputy Comptroller General  
of the United States