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DECISION



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

Entitlement To Per Diem

FILE: B-198008

DATE: SEP 17 1980

MATTER OF: Savings & Loan Examiners - Expenses for travel of less than 24 hours

- DIGEST:
1. Federal Home Loan Bank Board questions whether it may establish different per diem policies for employees traveling less than 24 hours. Since agencies may consider factors which will reduce employee's expenses such as familiarity with locality through repeated travel, Board may limit per diem under certain circumstances. See FTR para. 1-7.3a. Agencies need not pay the same per diem rate to different employees, but, in the interest of fairness, agencies should limit per diem under uniform guidelines applicable to all employees.
 2. Federal Home Loan Bank Board questions whether it may pay fixed flat \$3 rate for commuting expenses in lieu of per diem where travel is less than 24 hours. Although FTR provides reimbursement of per diem on quarter-day basis, agencies have broad discretion to limit or deny per diem for travel of less than 24 hours. See FTR para. 1-7.3a and B-182728, February 18, 1975. In view of such broad discretion, agencies may limit per diem to flat rate reimbursement where travel is less than 24 hours.
 3. Federal Home Loan Bank Board questions whether it may limit per diem reimbursement to travel periods exceeding 11 hours and to areas outside a radius around employee's official duty station. Board may so limit reimbursement since agencies have broad discretion to limit or restrict per diem under FTR para. 1-7.6d(1). See B-180010.11, March 9, 1977.

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4. Federal Home Loan Bank Board questions whether it properly limited employees to flat rate per diem for travel of less than 24 hours in high-rate geographical areas (HRGA) from 1975 to 1979. It was within Board's authority to pay flat per diem from July 1, 1975, to 1979, when Board changed its policy. However, from May 19 through June 30, 1975, agencies were without authority to pay per diem for travel within HRGAs, and Board employees are entitled to reimbursement for actual expenses for such travel during that 6-week period.
5. Agencies may use blanket travel orders for frequent and repeated travel within a certain geographical area. See 14 Comp. Gen. 414 (1934) and 5 id. 255 (1925).
6. It is within authority of agency to deny per diem inside radius around official duty station and to limit actual expense reimbursement to only reasonable expenses for meals. See decisions cited. Furthermore, per diem or actual expenses are not allowable within corporate limits of employee's official duty station. See FTR paras. 1-1.3c(1) and 1-7.6a.

This decision is in response to a request from Richard L. Petrocci, Authorized Certifying Officer, Federal Home Loan Bank Board, concerning the entitlement of Board examiners to per diem for travel of less than 24 hours where no lodging expense is incurred. This decision has been handled as a labor-management relations matter under our procedures contained in 4 C.F.R. Part 21 (1980), and in this regard we have received comments on this matter from Local 3483 of the American Federation of Government Employees (union). The main issue presented is whether the Board may use a flat per diem rate for travel of less than 24 hours in per diem localities as well as high-rate geographical areas (HRGAs).

This issue and other related questions will be treated below under the headings "Per Diem Localities" and "High-Rate Geographical Areas."

BACKGROUND

The report from the Board states that it employs examiners who perform financial examinations of Savings & Loan Associations away from their permanent duty stations. Most of this travel is less than 24 hours where the examiners commute to and from their residences, but in many instances the examiners' workday including travel time exceeds 11 hours. The Board, citing the provisions of the Federal Travel Regulations (FTR) (FPMR 101-7), paras. 1-7.3a, c, and 1-7.6d, adopted a policy for field examiners of paying a flat \$3 allowance for travel of less than 24 hours where no overnight lodgings were obtained provided the travel period exceeded 11 hours, or exceeded 6 hours and began before 6 a.m. or ended after 8 p.m. However, the Board adopted a different policy for employees stationed at the Board's headquarters office in Washington, D.C., by allowing per diem for travel exceeding 10 hours with the per diem allowance computed on a quarter-day basis at a daily rate of \$16 for meals and miscellaneous expenses. In view of questions raised by the union, the Board posed four questions for our consideration:

1. whether the Board may establish two different policies for similar travel situations;
2. whether the Board may establish a flat per diem rate agency-wide and without regard to the quarter-day system of reimbursement;
3. whether the Board may authorize a flat per diem rate through blanket travel orders or specific travel orders; and
4. whether the Board may increase the travel time limitation from 10 to 11 hours.

The union contends that field examiners are entitled to per diem on a quarter-day basis for all

travel in excess of 10 hours, and the union questions the Board's authority to establish a flat per diem rate of \$3 and to authorize per diem only after 11 hours in travel status. The union argues that the field examiners are entitled to retroactive reimbursement for per diem based upon the policy applicable to headquarters employees (if travel exceeds 10 hours, per diem based on quarter-day principle). The union also questions the denial of per diem where the financial examination is performed within the employee's official duty station.

PER DIEM LOCALITIES

The first question is whether the Board may establish different policies for the payment of per diem for similar travel situations. We note that under the provisions of 5 U.S.C. §§ 5702, 5707 (1976), an employee who travels on official business away from his designated post of duty is entitled to a per diem allowance as provided under the Federal Travel Regulations. The FTR provides, in pertinent part, as follows:

"1-7.3. Agency responsibility for prescribing individual rates.

- "a. General. It is the responsibility of each department and agency to authorize only such per diem allowances as are justified by the circumstances affecting the travel. Care should be exercised to prevent fixing per diem rates in excess of those required to meet the necessary authorized subsistence expenses. To this end, consideration should be given to factors which reduce the expenses of the employee such as: Known arrangements at temporary duty locations where lodging and meals may be obtained without cost or at prices advantageous to the traveler; established cost experience in the localities where lodging and meals are required; situations where special rates for accommodations have been made available for a

particular meeting or conference; the extent to which the traveler is familiar with establishments providing lodging and meals at a lower cost in certain localities, particularly where repeated travel is involved; and the use of methods of travel where sleeping accommodations are provided as part of the transportation expenses.* * *" (Emphasis added.)

A per diem allowance is intended to reimburse a traveler for extra expenses incurred while he maintains his regular residence, and where no additional expenses are incurred, a per diem allowance should not be authorized. See B-168637, July 15, 1970; and Bornhoft v. United States 137 Ct. Cl. 134 (1956). In this regard, our Office has long held that the decision as to whether or not to authorize per diem and as to the amount of per diem to be authorized is within the discretionary authority of the employing agency. See B-182728, February 18, 1975, and decisions cited therein.

With regard to the establishment of different policies for field and headquarters employees, we note that agencies, in fixing per diem rates, shall consider factors which will reduce the expenses of an employee such as familiarity with a locality as developed through repeated travel. See FTR para. 1-7.3a quoted above. After consideration of such factors, we believe it is within the discretion of the agency to limit per diem reimbursement for field examiners. We know of no legal requirement that an agency pay the same per diem rate for similar travel by different employees, but, in the interest of fairness, we urge that any limitation on per diem reimbursement be made under uniform guidelines applicable to all employees.

The second question posed is whether the Board may establish a flat per diem rate or "commuting allowance" without regard to the quarter-day concept. The FTR provides as follows:

"1-7.6. Per diem computation rules.

* * * * *

"d. Computation of basic entitlement.

"(1) Travel of 24 hours or less. For continuous travel of 24 hours or less, the travel period shall be regarded as commencing with the beginning of the travel and ending with its completion, and for each 6-hour portion of the period, or fraction of such portion, one-fourth of the per diem rate for a calendar day will be allowed. However, 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.* * *"

Although the Federal Travel Regulations contemplate payment of per diem on a quarter-day basis, these regulations give broad discretion to the agency to grant only that amount of per diem as is justified under the particular circumstances of travel. See FTR para. 1-7.3a, quoted above. Furthermore, our Office has long held that FTR para. 1-7.6d does not require the payment of per diem for official travel, it merely precludes the payment of per diem where the travel period does not exceed 10 hours, except for early departure and late return. See B-180010.11, March 9, 1977, and decisions cited therein.

An agency may properly limit or deny per diem for travel situations such as described in this case. See B-182728, supra; B-177419, March 8, 1973; and B-176477, February 1, 1973. Such a determination has been made by agencies based upon the employee's commuting time, the distance traveled by the employee, or on a case-by-case basis. See B-180010.11, supra, and decisions cited therein. Based on the foregoing, we therefore conclude that it is within the authority of the Board to limit per diem reimbursement to a flat rate without regard to quarter-day reimbursement for travel of less than 24 hours where no lodging expenses are incurred.

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With regard to the Board's third question whether it may authorize a flat per diem rate though blanket travel orders, we believe the Board may limit per diem reimbursement within the exercise of agency discretion and use blanket travel orders for frequent and repeated travel within a certain geographical area. See 14 Comp. Gen. 414 (1934); 5 id. 255 (1925).

The fourth question is whether the Board may increase the travel time limitation from 10 to 11 hours. As noted above, FTR para. 1-7.6d does not require payment of per diem when temporary duty travel exceeds 10 hours, it merely precludes payment of per diem when temporary duty travel is less than 10 hours during the same calendar day. B-180010.11, supra. An agency's discretion to authorize or approve per diem is not diminished by this regulation (B-182728, supra) and, in light of this broad discretion to limit or deny per diem in this travel situation, we believe the Board may limit per diem reimbursement to those situations where the travel time exceeds 11 hours. See also B-173174, July 21, 1971. Although not required to do so, we urge the Board to apply this time limitation to all employees performing similar travel.

Finally, the union questions the denial of per diem in those travel situations where the travel is performed within the limits of the employee's official duty station. The FTR describes an employee's official duty station as the corporate limits of the city or town in which the employee is stationed (para. 1-1.3c(1)), and, absent specific statutory authority, an employee may not be paid per diem or actual subsistence expenses at his headquarters or place of abode from which he commutes daily to his official duty station. See FTR para. 1-7.6a and B-182586, December 17, 1974.

HIGH-RATE GEOGRAPHICAL AREAS

Effective May 19, 1975, the FTR was amended to require reimbursement on an actual expense basis for travel to designated high-rate geographical areas.

FTR Temp. Reg. A-11, May 19, 1975. Effective July 1, 1975, the FTR was amended (para. 1-8.1b(1)) to authorize agencies to prescribe a per diem allowance under certain conditions for travel to an HRGA. FTR, Temp. Reg. A-11, Supp. 1, June 27, 1975, Attachment A. The report from the Board states that until April 23, 1979, the policy for commuting travel remained unchanged following the establishment of HRGAs; that is, field examiners continued to receive a flat \$3 allowance on the rationale that all field examiners were covered under a blanket travel authorization and all commuting trips were similar. Since April 23, 1979, the Board has authorized reimbursement for travel in HRGAs on an actual expense basis. In view of questions raised by the union, the Board posed five questions for our consideration:

1. whether the Board may establish a flat per diem rate for all travel by field examiners to an HRGA;
2. whether the Board may utilize a blanket travel authorization for use of a flat per diem in an HRGA;
3. if a flat per diem in an HRGA is not permissible, whether the Board must retroactively reimburse employees for travel to an HRGA;
4. if the answer to question 3 requires retroactive payments, what documentation would be required for claims by field examiners; and
5. whether an agency may establish a radius around an official duty station within which per diem or actual expenses will not be allowed.

The union argues that while FTR para. 1-8.1b(1) permits an agency to prescribe a per diem allowance for travel in an HRGA, the Board has not consistently applied this policy since field examiners were limited to a flat \$3 allowance while other employees were authorized reimbursement on an actual expense basis. The union argues that field examiners are entitled to retroactive reimbursement on an actual expense basis for travel to HRGAs.

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The union also questions the agency's current policy of limiting claims for lunch to \$5.75 and denying all claims for breakfast and dinner.

With regard to the first question posed involving the use of a flat per diem rate, we hold for the reasons stated earlier that it is within the Board's authority to establish a flat per diem rate. As noted above, the FTR was amended effective May 19, 1975, to require reimbursement on an actual expense basis for travel to designated HRGAs, and it was not until July 1, 1975, that the FTRs were amended to permit agencies to prescribe a per diem allowance for travel to HRGAs.

It appears that the Board intended to pay per diem for travel to HRGAs since the Board's policy remained unchanged until 1979. However, there is a period from May 19 through June 30, 1975, where we believe the agency had no authority to authorize per diem for travel to HRGAs. See Rolf Mowatt-Larssen, B-184489, April 16, 1976. Therefore, the Board employees would be entitled to reimbursement on an actual expense basis for travel during this 6-week period to those cities designated as HRGAs effective May 19, 1975. All claims by these field examiners for additional travel reimbursement would be subject to the 6-year statute of limitations contained in 31 U.S.C §§ 71a, 237. See also 4 C.F.R. § 31.5 (1980). All such claims would require itemization of the expenses incurred as provided in FTR para. 1-8.5. Questions 3 and 4 are answered accordingly.

The second question concerns use of blanket travel authorizations and the flat per diem rate for travel in HRGAs of less than 24 hours where no lodging expense is incurred. As discussed in the preceding section of this decision, blanket travel authorizations are permissible in appropriate situations.

The fifth question involves the use of a radius around an official duty station within which per diem or actual subsistence expenses would not be allowed. As noted above, our Office has recognized that agencies may limit per diem reimbursement for this type of travel

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within a certain commuting distance from the employee's residence or official duty station based upon distance or commuting time. See B-191104, May 9, 1979; B-180010.11, supra; B-185374, July 29, 1976; B-175608, December 28, 1973; and B-170291, October 21, 1970.

With regard to the union's question on the Board limiting reimbursement for lunch, we point out that travelers are entitled to reimbursement only for reasonable expenses for meals and that the employing agency shall determine what constitutes reasonable expenses for meals under the circumstances. B-186740, March 15, 1977, and B-186078, October 12, 1976. As for reimbursement for breakfast or dinner, we point out that reimbursement for actual subsistence expenses is allowable for the same type of expenses as normally covered by per diem. FTR para. 1-8.2b (May 19, 1975). Where an employee commutes to and from his residence each day in performing this temporary duty travel, we anticipate he will normally obtain breakfast and dinner at his residence. See, for example, B-186820, February 23, 1978; and B-185826, May 28, 1976. However, there may be circumstances justifying reimbursement of a breakfast or dinner purchased away from his permanent duty station. B-195940, December 26, 1979; and B-192246, January 8, 1979.

Accordingly, claims for additional travel expense reimbursement may be paid consistent with the above discussion.

Harry R. Van Clev

For the Comptroller General
of the United States