

DECISION

17494 ms, Diamond
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-200081

DATE: March 25, 1981

MATTER OF: Dale Heald - *[Claim For]* Actual subsistence expenses *]*

DIGEST: Employee who remains overnight in high-rate geographical area (HRGA) before proceeding to temporary duty location in non-HRGA as scheduled because he had been in work or travel status from before 8 a.m. until after 4 p.m. and further travel would have required extensive driving over unfamiliar roads acted prudently under the circumstances. He may be reimbursed actual subsistence expenses based on the unusual circumstances of the travel assignment since, consistent with FTR para. 1-8.1c(3)(d), he necessarily occupied lodgings in an HRGA. The same is true with regard to his return to HRGA the following night because of forecasted winter storm and because of early morning flight the next day.

This action is in response to a request dated August 22, 1980, from Mr. Robert Caswell, Authorized Certifying Officer, Department of the Interior, for an advance decision concerning the claim of Mr. Dale Heald for actual subsistence expenses incurred while on temporary duty.

Mr. Heald performed temporary duty from March 17 through March 28, 1980, at Albuquerque, New Mexico; Salt Lake City, Utah; and Phoenix, Arizona. Although Mr. Heald performed official business in Brigham City, Utah, on March 20, he spent the evenings of March 19 and 20 in Salt Lake City, Utah, a high-rate geographical area (HRGA). Mr. Heald claimed reimbursement of his subsistence expenses on an actual basis for March 19 and 20 since he spent those evenings in an HRGA. The Department of the Interior, Bureau of Indian Affairs (Bureau) only allowed reimbursement to the extent of \$35 for those days, the per diem allowance for Brigham City, Utah, as Mr. Heald was required to be on duty at that location on those days. The Bureau disallowed his expenses in the amounts of \$10.93 and \$13.33, respectively, for March 19 and 20.

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The certifying officer is of the opinion that Mr. Heald's claim is properly denied in light of Bureau Travel Regulation 42 BIAM Supplement 4, paragraph 4.1H(1)(b), which is essentially identical to Federal Travel Regulation (FTR) para. 1-8.1b (FPMR Temp. Reg. A-11, Supp. 4, Attachment A, April 29, 1977). The FTR states in pertinent part:

"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. * * *

Mr. Heald contends that although Brigham City, Utah, was the location where his official duty was required he should be reimbursed actual subsistence expense rather than a per diem allowance because he acted prudently in staying in Salt Lake City, an HRGA, on March 19 and 20. Mr. Heald explains that he arrived at the Salt Lake City Airport after 4 p.m. on March 19. Under these circumstances he believes it would be unreasonable to expect him to have retrieved his luggage from the airport, traveled to a car rental facility, rented a car and traveled approximately 60 miles to Brigham City that evening. On March 20, Mr. Heald completed his duties by mid-afternoon. He explains that in light of a forecasted winter storm, which subsequently occurred, he felt it reasonable to drive back to Salt Lake City that day since his flight to Phoenix was scheduled somewhere between 7:15 and 8:15 the next morning.

The certifying officer is correct in interpreting the HRGA authority of paragraph 1-8.1b as authorizing actual subsistence expense reimbursement at the HRGA rate only when the employee performs official duties in such area. However, we believe that Mr. Heald may be reimbursed for expenses in excess of the Brigham City per diem rate under FTR para. 1-8.1c. That paragraph authorizes payment of actual and necessary expenses when the maximum per diem allowance otherwise payable

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is determined to be inadequate due to the unusual circumstances of the travel assignment without regard to whether the duty is in an HRGA. Subparagraph 1-8.lc(3) sets forth examples of situations involving unusual circumstances. Effective April 21, 1980, that subparagraph was amended to add a new subparagraph 1-8.lc(3)(d) to the listing of examples. Currently subparagraph 1-8.lc(3) provides in part:

"(3) Travel which involves unusual circumstances may include, but is not limited to, the following situations:

* * * * *

"(d) The temporary duty point is located in an area adjacent to a designated HRGA and the subsistence costs at available facilities are commensurate with those in the HRGA or the employee must of necessity obtain lodging in the HRGA."

Paragraph 1-8.lc(3) merely lists examples of travel situations that may be regarded as involving unusual circumstances. As such it is not a limiting regulation. Thus, although the situation in question was not incorporated into the regulation in the language of subparagraph 1-8.lc(3)(d), until after Mr. Heald's travel to Brigham City, the added language was not necessary to authorize payment but was added to make it clear that this situation could well involve unusual circumstances which would justify an actual expense authorization.

The question of whether Mr. Heald should be reimbursed actual subsistence expenses, thus, turns upon whether he "of necessity" obtained lodgings in Salt Lake City, a HRGA, rather than in the adjacent area of Brigham City.

With respect to March 19, we conclude that Mr. Heald is entitled to actual subsistence expenses. The FTR at paragraph 1-1.3a states that "An employee traveling on official business is expected to exercise the same care in incurring expenses that a prudent person would

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exercise if traveling on personal business." We have previously held that it was prudent for an employee to remain overnight in Chicago rather than proceed to Los Angeles as scheduled in view of the length of the employee's workday on that day and the fact that it would have taken an additional 6 hours to travel to Los Angeles. See 51 Comp. Gen. 364 (1971). Likewise, it was prudent for Mr. Heald to remain overnight in Salt Lake City since he had been either working at the Albuquerque Area Office or had been in a travel status since before 8 a.m. and did not arrive in Salt Lake City until after 4 p.m. that day. Mr. Heald then had to pick up his luggage, travel to a rental car facility and rent a car for travel to Brigham City, which is over 60 miles from Salt Lake City on roads unfamiliar to him. Under these circumstances we believe it is reasonable to conclude that Mr. Heald "of necessity" obtained lodgings in the HRGA and that he is entitled to actual subsistence expenses for that day. See FTR para. 1-8.lc(3)(d), above.

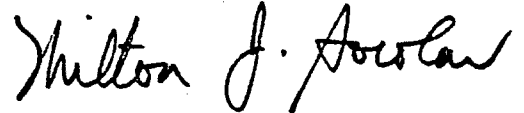
We also find that Mr. Heald is entitled to actual subsistence expenses for March 20. On that day Mr. Heald prudently decided to return to Salt Lake City, when he concluded his official business in Brigham City, because a winter storm was forecasted. Mr. Heald's flight from Salt Lake City to Phoenix, Arizona, was scheduled for the early morning of March 21 and he would have had to leave Brigham City long before the start of his normal workday. Title 5, United States Code, section 6101(b)(2) provides that to the extent practicable travel should be scheduled within the regularly scheduled workweek of the employee. As Mr. Heald finished his business in Brigham City in the early afternoon on March 20 it was more reasonable for him to travel to Salt Lake City that day, within his normal workday, when the weather still permitted safe driving, than to wait to travel in the early morning hours of March 21, and chance missing his flight from Salt Lake City due to the weather conditions. Under these circumstances Mr. Heald may be considered to have necessarily obtained lodgings in the HRGA within the meaning of FTR para 1-8.lc(3)(d). He is, therefore, entitled to actual subsistence expenses for March 20.

Mr. Heald's situation is to be distinguished from that of Mr. O'Brien's in B-187344, February 23, 1977.

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Mr. O'Brien stayed overnight in an HRGA although he commuted to his temporary duty in a non-HRGA. Apparently this was done merely for Mr. O'Brien's convenience. As a result, Mr. O'Brien was placed constructively at his temporary duty location and was reimbursed on a per diem basis. However, in Mr. Heald's case, his decision to remain in Salt Lake City on March 19 and return to Salt Lake City on March 20 was dictated by the circumstances of his travel discussed above.

Accordingly, action should be taken to reimburse Mr. Heald on an actual subsistence expense basis for March 19 and 20.



Acting Comptroller General
of the United States