

**DECISION**

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

**FILE: B-203080**

**DATE: June 8, 1982**

**MATTER OF: Billy J. Stafford - Per Diem and Travel  
Expenses While on Temporary Duty - Illness**

- DIGEST:**
1. An employee became incapacitated and was hospitalized at a temporary duty station. Subsequently, he was released from the hospital to transfer to another medical facility nearer his home for continued treatment. Provisions of 5 U.S.C. § 5702(b) (1976), and FTR paragraph 1-7.5b(1) are to be liberally construed in order to accomplish the statute's equitable purpose. Therefore, an employee who becomes incapacitated while away on temporary duty is entitled to receive up to 14 days of per diem for the period of his incapacitation while away from his post of duty.
  2. Under FTR paragraphs 1-2.4 and 1-2.5b, an employee who becomes incapacitated while away on temporary duty is entitled to reimbursement of those travel expenses sufficient to return the employee from his temporary duty station to his post of duty by a direct and usually traveled route.

The Chief of the Accounting Section of the Southwest Region, Internal Revenue Service (IRS), has asked this Office for a decision as to whether she may properly certify for payment the claim of Billy J. Stafford, an employee of IRS. Mr. Stafford seeks payment for travel expenses and per diem in connection with his incapacitation due to illness while on temporary duty away from his post of duty. Because Mr. Stafford returned to his post of duty by an indirect route in order to obtain further medical treatment, IRS limited reimbursement on his original voucher to the travel expenses and per diem to which he would have been entitled had he returned via a direct route. Mr. Stafford has reclaimed the additional travel expenses and per diem.

We conclude, for the reasons that follow, that payment is due for additional per diem covering the period Mr. Stafford was hospitalized, but that he is not entitled to additional travel expenses.

BACKGROUND

Mr. Stafford departed his post of duty in El Dorado, Arkansas, on October 26, 1980, for temporary duty in Oklahoma City, a distance of 414 miles. He arrived in Oklahoma City that night. On the following day, October 27, 1980, Mr. Stafford suffered a heart attack and was immediately hospitalized. Mr. Stafford was released from the hospital in Oklahoma City on October 31 in order to travel to a hospital in Little Rock, Arkansas, where he was to undergo further testing and possibly surgery. Little Rock is about 350 miles from Oklahoma City and about 130 miles from El Dorado.

The decision to continue Mr. Stafford's testing and treatment in Little Rock, rather than Oklahoma City, was made by the cardiologist in Oklahoma City who had supervised Mr. Stafford's treatment there. Although the facilities and staff necessary to further test and treat Mr. Stafford were available in Oklahoma City, the cardiologist was reluctant to do so because, if surgery was conducted in Oklahoma City, the long return trips from El Dorado to Oklahoma City for follow-up treatment might aggravate Mr. Stafford's heart condition. At that time, there were no cardiologists in El Dorado. However, adequate staff and facilities did exist in Little Rock, which is only about 130 miles from El Dorado. Therefore, the cardiologist recommended that Mr. Stafford seek further testing and treatment in Little Rock.

Based on the cardiologist's advice, Mr. Stafford left the hospital in Oklahoma City on October 31, 1980, and was driven to Little Rock in his car by his wife who had accompanied him from El Dorado to Oklahoma City. Upon arrival in Little Rock, Mr. Stafford was admitted to the hospital for further testing and treatment. He remained there until November 6, 1980, at which time he and his wife departed for El Dorado, arriving there on that same day.

In his original voucher, Mr. Stafford claimed mileage and per diem from the time of his departure from El Dorado on October 26 to the time of his return to El Dorado on November 6. IRS refused to authorize payment for the entire amount claimed. Instead, IRS limited payment on the claim to mileage and per diem from the time of his departure from El Dorado on October 26 through the period of his hospitalization in Oklahoma City, plus the amount of mileage and per diem to which he would have been entitled had he returned to El Dorado by a direct and usually traveled route upon release from the Oklahoma City hospital on October 31. IRS refused to authorize per diem and mileage to, in, or from Little Rock. This decision was based upon Federal Travel Regulations (FPMR 101-7, May 1973) (FTR) paragraphs 1-2.4 and 1-7.5b(4), which permit the authorization of travel expenses and per diem sufficient to return an employee to his post of duty whenever the employee becomes "incapacitated" due to illness or injury not due to his own misconduct while away on temporary duty. IRS also relied upon FTR paragraphs 1-2.5b and 1-7.5d, which limit reimbursement for travel expenses to the amount to which the employee would have been entitled had he returned by a direct and usually traveled route.

Mr. Stafford is reclaiming the disallowed travel expenses and per diem for his travel to and treatment in Little Rock, as well as his return to El Dorado from Little Rock. This amount totals \$302.80. Mr. Stafford states that insofar as he was aware, he was "in a continued travel status subject to the allowance of per diem and mileage" from the time he left his post of duty until he returned. He bases this belief on the fact that he was so informed, at that time, by his supervisor who states in a memo for the record that Mr. Stafford had his "implied consent" to travel at Government expense to seek examination and treatment in Little Rock. The supervisor also states that he approved Mr. Stafford's claim because "the transfer [to Little Rock] was an approved change of temporary duty stations." Based on this, Mr. Stafford argues that his trip to Little Rock was an authorized part of his temporary duty assignment. IRS responds to this argument by citing FTR paragraph 1-1.3b which

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states that reimbursement may be made only for those expenses which are essential to the transaction of official business. IRS notes that Mr. Stafford conducted no official business in Little Rock, but instead sought personal medical treatment. Therefore, IRS believes that reimbursement on the basis of the supervisor's statement would be improper.

Mr. Stafford places his major reliance upon a provision in the Internal Revenue Manual. The provision is similar to FTR paragraph 1-7.5b(1), which provides for a continuation of per diem for up to 14 days whenever a traveler takes a leave of absence because of being incapacitated due to illness or injury not due to his own misconduct.

In Mr. Stafford's view, this regulation mandates the continuation of per diem for up to 14 days to an employee on temporary duty who becomes incapacitated as a result of illness. Mr. Stafford maintains that, under this provision, had he remained hospitalized in Oklahoma City, instead of transferring to Little Rock, IRS would have authorized payment of his original claim in its entirety. Therefore, he argues that it should not matter whether the 14 day period is spent in a hospital in Oklahoma City or one in Little Rock. Mr. Stafford maintains that it is patently unfair to deprive him of the full 14 days per diem simply because he followed sound medical advice and transferred to Little Rock to complete his testing and treatment.

Because the report from IRS does not address the application of FTR paragraph 1-7.5b(1) to this claim, we informally requested their comments on the issue. We were informed that IRS agrees with Mr. Stafford that, had he remained in Oklahoma City for testing and treatment, he would have been entitled to up to 14 days of per diem under this regulation. However, IRS maintains that this regulation is not applicable to Mr. Stafford's case because he moved himself from Oklahoma City to Little Rock. IRS argues that, by transferring himself to Little Rock in order to receive treatment identical to that which he could have received in Oklahoma City, Mr. Stafford effectively quit his temporary duty assignment and was only entitled to be returned to his post of

duty under the provisions of FTR paragraphs 1-7.5b(4) and 1-2.4. IRS equates Mr. Stafford's transfer to and hospitalization in Little Rock to a return to his post of duty. That conclusion is based on the fact that (1) his doctor's advice was to seek further examination and treatment closer to his residence; (2) the hospital he went to, though in a different city, is the hospital to which he would have been taken, had the attack occurred at his residence or office in El Dorado; and (3) the circumstances of Mr. Stafford's release from the hospital in Oklahoma City and his travel to Little Rock suggest to IRS that he was no longer "incapacitated" within the meaning of FTR paragraph 1-7.5b(1). IRS believes it to be mere happenstance that the cardiology facilities which serve El Dorado are located in another city. Nor does IRS believe that its conclusions should be altered by the fact that Mr. Stafford was acting in accord with his doctor's advice. Based on these premises, IRS concludes that, for all practical purposes, Mr. Stafford had opted to return himself to his post of duty to be hospitalized in accordance with FTR paragraphs 1-7.5b(4) and 1-2.4. Therefore, IRS believes that it was correct to deny payment of the per diem and travel expenses which cover Mr. Stafford's extra travel and per diem to, in, and from Little Rock.

#### ANALYSIS

FTR paragraph 1-7.5b(1), upon which Mr. Stafford relies, has not been substantially altered since its insertion into the Standardized Government Travel Regulations in 1950. The provision implements the language of 5 U.S.C. § 5702(b) (1976), which, according to its legislative history, was designed to prevent the imposition on government employees of the inequitable hardships which result from becoming incapacitated by illness or injury while away on Government business. S. Rep. No. 1364, 81st Cong., 2d Sess. 1 (1950); H. R. Rep. No. 1332, 81st Cong., 1st Sess. 1 (1949). See also Richard L. Greene, 59 Comp. Gen. 57 (1979).

In view of the equitable purpose of this statute, we have given it and the regulations which implement it, including FTR paragraph 1-7.5b(1), a liberal construction. See, for example, Richard L. Greene, 59 Comp. Gen. 57 (1979) (employee was entitled to reimbursement of the expenses of returning his vehicle to

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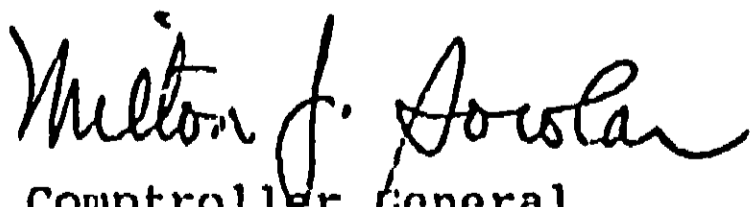
his duty station after he became incapacitated while on temporary duty); B-132769, August 15, 1957 (employee entered into "a per diem status" beginning with the departure of the train which he had boarded in order to go to his temporary duty assignment; therefore, he was entitled to per diem, despite the fact that, before the train left the metropolitan area, he became incapacitated, was removed from the train, and was hospitalized "close to his residence and official headquarters"); and B-122154, December 31, 1954 (employee entitled to per diem in lieu of subsistence for the period in which he was incapacitated and was under the care of a physician at a place other than his residence, official duty station, or temporary duty station). Moreover, we have held that the language of FTR paragraph 1-7.5b(1) (stating that per diem "shall be continued for periods not to exceed 14 calendar days") is mandatory and vests no discretion in administrative officials to deny an employee per diem for a sick leave period otherwise coming within the terms of that regulation. B-144985, March 3, 1961.

#### CONCLUSION

Based on the foregoing, we conclude that IRS should certify for payment Mr. Stafford's claim for per diem for the balance of the 11 day period in which Mr. Stafford was incapacitated, up to his return to El Dorado (his post of duty) on November 6.

With regard to Mr. Stafford's claim for travel expenses during this period, we conclude that payment of Mr. Stafford's claim was properly confined to those expenses which would have been incurred, had Mr. Stafford returned to his post of duty (El Dorado) from his temporary duty assignment (Oklahoma City) by a direct and usually traveled route. FTR paragraphs 1-2.4, 1-2.5b. See B-169917, July 13, 1970.

Mr. Stafford's voucher, therefore, is returned to IRS for payment consistent with this decision.

*for*   
Comptroller General  
of the United States