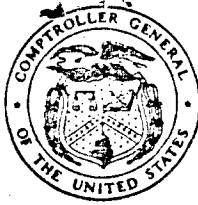


m. Pool

DECISION



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

19805

FILE: B-203820

DATE: October 19, 1981

MATTER OF: Robert Gray - Per Diem - Absence of Travel Authorization

- DIGEST:**
- (1) Employee of Office of Personnel Management was detailed from designated post of duty at Albuquerque, New Mexico, to perform official assignment at El Paso, Texas, for indeterminable period eventually totaling 5 months. Through administrative oversight employee was not issued travel orders. Since no specific written authorization was given prior to the travel for payment of per diem, no right to a particular per diem rate vested as and when the travel was performed so as to prohibit retroactive modification of travel orders issued after all travel was performed. Thus, in particular circumstances, where employee's entitlement to per diem is otherwise undisputed, agency may retroactively establish reasonable per diem rate.
 - (2) An employee on temporary duty who stays at a family residence may not be reimbursed lodging costs based on the average mortgage, utility, and maintenance costs since these are costs attributable to the acquisition of private property as a second residence and are not incurred by reason of the employee's travel or in addition to his travel expenses.
 - (3) An employee who is performing temporary duty may voluntarily return to his permanent duty station or place of abode on nonworkdays or after the close of business on workdays and may be reimbursed for round trip travel expenses not to exceed what would have been allowed for per diem or actual expense allowance had the employee remained at the temporary duty station.

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The issue in this decision is the entitlement of an employee to reimbursement for travel expenses incident to a 5-month temporary duty assignment where no travel orders were issued. We hold that notwithstanding the absence of travel orders the employee may be reimbursed his transportation expenses and per diem at a per diem rate to be determined by his employing agency. No lodging costs may be reimbursed where the residence at the temporary duty station was not acquired by reason of the official travel, but the employee may be reimbursed for weekend return travel to his official duty station.

This action is in response to a request from Ms. Linda C. Burton, Authorized Certifying Officer, Office of Personnel Management, Southwest Region, for an advance decision concerning the legality of paying certain travel expenses of Mr. Robert Gray incurred during a temporary duty assignment in El Paso, Texas.

BACKGROUND

As an Office of Personnel Management (OPM) investigator assigned to the Albuquerque, New Mexico, office Mr. Gray was detailed for official reasons to El Paso, Texas, from October 14, 1980, through March 20, 1981. At the onset of the detail, it could not be determined how long Mr. Gray would be assigned to work in El Paso. Although the agency detailed Mr. Gray to El Paso, it failed to provide Mr. Gray with travel orders establishing any method for reimbursing expenses, either actual subsistence expenses or per diem in lieu of actual expenses. Nevertheless, Mr. Gray submitted several vouchers claiming per diem at the rate of \$3.50 per day as reimbursement for travel expenses incurred during his detail, and these vouchers, totaling \$525, were paid as claimed.

In explaining the \$3.50 daily claim of Mr. Gray, the agency states that Mr. Gray maintained his permanent residence at his official duty station in Albuquerque and that he also maintained a second residence at which his family resided in El Paso. However, the agency report states further that the costs of purchasing and maintaining the El Paso residence were incurred by reason of his desire to maintain a second residence and not by virtue of temporary duty assignment travel.

At some point following the termination of his detail on March 20, 1981, Mr. Gray contacted OPM's finance office and questioned the amount of his reimbursement contending that he was losing money. The agency reports that Mr. Gray stated that his detail in El Paso had caused him to return several times to Albuquerque to check on his residence there. He had absorbed the transportation costs of the return travel visits and the per diem allowance of \$3.50 was not offsetting these costs, which were extra expenses incident to traveling on duty in El Paso. In addition, he felt his per diem allowance should be increased, retroactively. Mr. Gray stated that a \$10 per day allowance would cause him to break even, but in his reclaim voucher he claims \$23 per day for all per diem involved.

On these facts the agency asks whether Mr. Gray is entitled to per diem at a rate of \$3.50 or \$23 per day and whether he is entitled to return travel to Albuquerque in lieu of per diem.

ENTITLEMENT TO TRAVEL EXPENSES

The authority to pay per diem and reimburse travel expenses incurred by an employee while traveling on official business is provided by chapter 57 of title 5, United States Code (1976). The Federal Travel Regulations issued by the Administrator of General Services pursuant to 5 U.S.C. § 5707 govern the official travel of Federal employees. Paragraph 1-1.4 of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973) provides as follows:

"Authority for travel. Except as otherwise provided by law, all travel shall be either authorized or approved by the head of the agency or by an official to whom such authority has been delegated. Ordinarily, an authorization shall be issued prior to the incurrence of the expenses. The authorization shall be as specific as possible in the circumstances as to the travel to be performed."

The above-quoted provision and its preceding regulation in the Standardized Travel Regulations have been

construed by this Office as requiring a written authorization or approval, although the words themselves are not clear on the matter. See Robert W. Cooper, B-192590, December 14, 1978. This construction is supported by FTR para. 1-11.3b which states that the travel voucher must be supported by a copy of the travel authorization. Therefore, except when prior issuance is impracticable, or when the travel is of such a limited nature that it is unnecessary, written authorization should be issued prior to incurrence of travel expenses. We have stated that written travel order procedures assist in fund control and meeting requirements of recording obligations at the time they are incurred. Moreover, they also serve to provide a notice and record of the employee's instructions and entitlements. Lewis J. Kraft, B-198937, April 15, 1981, citing Cooper, supra.

None of the prior authorization steps were undertaken in Mr. Gray's case although it is clear that he was detailed to El Paso in the Government's interest and that he was reimbursed for per diem claims amounting to \$3.50 per day for the period of his detail.

The primary issue in this case is whether Mr. Gray may receive additional reimbursement for expenses he incurred in connection with his temporary duty assignment where the assignment has been completed and no travel authorization was ever issued. The general rule regarding retroactive modification or amendment of travel orders is that under orders entitling an officer or employee to travel allowances, a legal right to such allowance vests in the traveler when the travel is performed. It may not be divested or modified retroactively so as to increase or decrease the right which has accrued. Dr. Sigmund Fritz, 55 Comp. Gen. 1241 (1976). However, in one line of prior decisions of our Office we have permitted "approval" by administrative action after the fact. Woodrow O. Davis, B-198062, June 23, 1981, citing Thomas W. Rochford, B-197960, August 6, 1980. The significant factor for these cases was that the item approved was not included in the authorization issued prior to the travel. Thus, the cases did not involve a retroactive modification of the travel orders. Rather, the approval was the original determination concerning the item in question. Davis, supra.

Further distinguishing this case from the general rule set out above is the fact that Mr. Gray never had travel orders under which a particular per diem rate had become vested. The record in this case indicates that the agency erred in handling Mr. Gray's temporary duty assignment. Not only should official travel be authorized in advance and performed under competent orders, but also, in accordance with paragraph 1-8.1(b) of the FTR, travelers in high-rate geographical areas such as El Paso are normally reimbursed for actual subsistence expenses. Per diem in such cases must specifically be authorized in advance, and an employee who travels to a high-rate geographical area for temporary duty may not subsequently elect to receive per diem in lieu of itemized actual expenses. H. D. Anderson, 57 Comp. Gen. 367 (1978).

As a result of the agency's oversight, Mr. Gray's right to a specific per diem rate did not vest at the time of travel as no travel order was issued in connection with his temporary duty assignment. Thus, since the pivotal point for disallowance of a retroactive modification of travel orders is that the rights and obligations of the employee have already vested, the general rule does not apply to Mr. Gray's case. See Robert L. Feder, B-185355, July 2, 1976.

As in the Cooper case cited above, there appears to be no dispute that Mr. Gray has met the statutory requirements entitling him to payment of travel costs by the Government. That is, he was detailed to a work assignment on official business away from his designated post of duty. His work assignment and place of lodging in El Paso were known to his supervisors. While there has not been a strict compliance with the FTR and our previous decisions concerning written authorization, it is our view that the agency's knowledge and approval of Mr. Gray's detail and the agency's further reimbursement of certain expenses claims submitted by Mr. Gray in connection with his temporary duty assignment are evidence of the agency's clear intent to provide a per diem entitlement for Mr. Gray. We hold it is a sufficient basis upon which to further consider Mr. Gray's specific retroactive per diem entitlement in the circumstances presented.

COMPUTATION OF TRAVEL REIMBURSEMENT

In the ordinary case, in accordance with FTR paragraph 1-8.1b, actual subsistence expenses are normally authorized or approved when a traveler goes to a high-rate geographical area, unless the high-rate area is en route or an intermediate stopover point where no official duty is performed. However, an employee who travels to a high-rate geographical area for official business may not subsequently elect to receive per diem in lieu of itemized actual expenses since per diem in such cases must specifically be authorized in advance under FTR paragraph 1-8.1b(1). See Anderson, supra. However, as we have noted, Mr. Gray's is not the ordinary case. Although he performed his temporary duty assignment without competent travel orders, he did submit "per diem claims" while on his detail, and the record before us supports the intent of the parties that Mr. Gray would be reimbursed for his travel expenses. Thus, in the particular circumstances presented where receipts may no longer be available to document actual subsistence expenses, we have no objection to the agency retroactively establishing a per diem entitlement for Mr. Gray.

Paragraph 1-7.3c(1) of the FTR, FPMR Temp. Reg. A-11, Supp. 11, October 1, 1980 (45 Fed. Reg. 65148 (1980)), provides that when lodgings are required, per diem shall be established on the basis of the average amount the traveler pays for lodging, plus an allowance of \$23 for meals and miscellaneous subsistence expenses. This is known as the "lodgings-plus" system of computing allowable per diem. Paragraph 1-7.3c(2) of the FTR requires that the traveler actually incur expenses for lodging before allowing consideration of lodging costs for purposes of computing per diem. Thus, the only lodging expenses incurred by a traveler which may properly be reimbursed are those which are incurred by reason of the travel and which are in addition to the usual expenses of maintaining his residence. Here the agency reports that Mr. Gray maintained a second residence at the temporary duty site (El Paso) for personal family reasons. The costs of purchasing and maintaining the residence were incurred by reason of his desire to maintain a second residence and not by virtue of his travel. The claimant obligated himself to pay these costs independently of and without

reference to his travel. In short, his mortgage and maintenance payments would have been made irrespective of the travel, and these costs are not reimbursable. See Sanford O. Silver, 56 Comp. Gen. 223 (1977), citing Bornhoft v. United States, 137 Ct. Cl. 134 (1956). See also Fred Frishman, B-186643, May 9, 1977. By contrast, see Robert E. Larrabee, 57 Comp. Gen. 147 (1977), where the employee purchased a second residence in connection with his temporary duty.

Since lodgings are not an appropriate item for reimbursement, there remains for determination what would be a suitable allowance - not exceeding \$23 per day - for meals and miscellaneous subsistence expenses under paragraph 1-7.3c(1) of the FTR. In this regard, neither the agency's report nor Mr. Gray's reclaim voucher provides adequate information to approximate any amounts which were reasonably incurred in excess of certain travel expenses which have been paid. In our view, paragraph 1-7.3c(3) of the FTR provides a sound procedural basis for the resolution of the remaining per diem entitlement. That paragraph states:

"(3) An agency may determine that the lodging-plus method as prescribed herein is not appropriate in circumstances such as when quarters or meals, or both, are provided at no cost or at a nominal cost by the Government or when for some other reason the subsistence costs to be incurred by the employee can be determined in advance. In such instances a specific per diem rate may be established and reductions made in accordance with this part, provided the exception from the lodging-plus method is authorized in writing by an appropriate official of the agency involved."

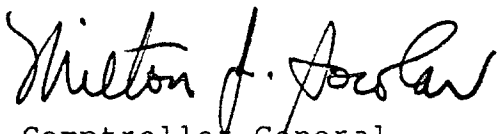
Accordingly, the agency should establish a retroactive per diem entitlement incident to a duly executed travel authorization that reimburses Mr. Gray for the specific additional per diem expenses he reasonably incurred in performing his temporary duty assignment.

We note that Mr. Gray's initial travel from Albuquerque to El Paso as well as his return to official station upon

completion of the temporary duty assignment may be reimbursed as items of entitlement separate from the per diem calculation. Similarly, Mr. Gray's transportation expenses while detailed are reimbursable to the same extent as if he occupied rented quarters at the temporary duty location. See, for example, Larrabee, 57 Comp. Gen. 147, 151, supra.

Finally, in regard to Mr. Gray's intermittent return trips from El Paso to Albuquerque during the period of his detail, the agency asks whether travel to Albuquerque may be paid in lieu of per diem. An employee who is performing temporary duty may voluntarily return to his permanent duty station or place of abode on nonworkdays or after the close of business on workdays and may be reimbursed for round trip travel expenses not to exceed what would have been allowed for per diem or actual expense allowance had the employee remained at the temporary duty station. See FTR paras. 1-7.5c, 1-8.4f and Gretchen Ernst, B-192838, March 16, 1979. Thus, Mr. Gray's claims for mileage and per diem en route between Albuquerque and El Paso may be paid consistent with the applicable regulations and our decisions.

Accordingly, Mr. Gray's reclaim voucher may be paid consistent with our decision.

for 
Comptroller General
of the United States