

118632 *Mr. Agaparian*
8/2/79

DECISION



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

FILE: B-205058

DATE: June 8, 1982

MATTER OF: William F. Beierle

DIGEST: Employee who performed renewal agreement travel from Kwajalein, Marshall Islands, to Huntsville, Alabama, arrived at Hickham, AFB, Hawaii, at 6:30 p.m. after 5-1/2 hour flight and continued on to Los Angeles by flight departing from Honolulu at 11:30 p.m. two days later. Employee's entitlement to per diem should not be based on constructive schedule which requires him to continue on from Hawaii by flight departing at 11:30 p.m. on same night as his arrival at Hickham AFB. The fact that the employee traveled at a late hour following 2 days of rest does not warrant departure from constructive travel schedule otherwise applicable which would permit him to continue on at a reasonable hour the following morning.

The Finance and Accounting Office, U.S. Army Missile Command, Redstone Arsenal, Alabama, has requested an advance decision as to whether Mr. William F. Beierle, a civilian employee, is entitled to payment of additional per diem together with payment of taxi fares and costs of baggage handling in connection with an overnight stop-over in Honolulu, Hawaii, incident to renewal agreement travel from Kwajalein, Marshall Islands, to Huntsville, Alabama. The submission has been forwarded to our Office by the Per Diem, Travel and Transportation Allowance Committee under PDTATAC Control No. 81-28.

For the reasons stated below the employee is entitled to the payment of additional per diem for himself and other allowable expenses incident to his overnight stop in Honolulu.

Mr. Beierle states that in accordance with his travel order dated August 29, 1979, he and his wife embarked upon renewal agreement travel on October 24, 1979. Having arrived at the airport at Kwajalein at 9 a.m. (local time), they departed at 11 a.m. and after a 5-1/2 hour flight arrived at Hickham, Air Force Base, Hawaii, at 6:30 p.m. (local time). At 8 p.m. he and his wife departed for Honolulu where they remained overnight in a hotel. Mr. Beierle states that

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the next day he purchased tickets for the remainder of the flight. On October 26, he and his wife departed Honolulu, Hawaii, at 11:30 p.m. and arrived at their final destination, Huntsville, Alabama, on October 27 at 4 p.m. (local time).

Mr. Beierle has claimed additional per diem, taxi fare and luggage handling costs incident to their overnight stay in Honolulu. The Army has disallowed Mr. Beierle's claim on the basis of a constructive travel schedule that does not provide for any delay in the performance of onward travel from Hawaii. In explaining its determination the Redstone Arsenal advised Mr. Beierle that a traveler en route from Kwajalein normally would not be expected to continue his travel aboard a flight that departed at 11:30 p.m. following arrival in Hawaii 5 hours earlier. However, because they actually traveled aboard an air carrier that departed at that hour 2 days later, the 11:30 p.m. departure time on October 24 was used for constructive cost purposes. Thus, the Army reconstructed Mr. Beierle's travel from Kwajalein to Huntsville and determined his per diem entitlement on the basis of a constructive schedule continuing on from Honolulu at 11:30 p.m. on October 24 with connections in Los Angeles and arriving in Huntsville the following afternoon. This schedule would have required Mr. and Mrs. Beierle to remain in a travel status for 21 hours without interruption.

As the Army indicates an employee should not be required to travel between the hours of midnight and 6 a.m. where a more reasonable schedule is available. While language reflecting this travel principle is included in paragraph C4464-2a of Volume 2 of the Joint Travel Regulations (2 JTR) applicable specifically to temporary duty travel, the principle itself is one of broader application. The language of paragraph C4464-2 (formerly C1051-2) was intended as a guideline for use in determining whether the traveler has acted in a reasonable manner and thus within the requirement set forth at paragraph C4464-1 (formerly C1051-1) that an employee traveling on official business exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business. 51 Comp. Gen. 364 (1971). At the time of that decision, both regulations appeared among the Joint Travel Regulations "General Provisions" and, consistent with the governing language of paragraphs 1-1.3 and

2-2.1 of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973, as amended) their context made it clear that the "prudent person" rule is not restricted to travel on temporary duty. The prudent person rule continues to apply to permanent duty and renewal agreement travel notwithstanding the fact that the specific and more detailed discussion of the rule is now in 2 JTR, Chapter 4, Part J, which is applicable only to temporary duty travel.

Thus, the issue presented in Mr. Beierle's case is whether the constructive travel schedule used to determine his per diem entitlement should be based on an itinerary that reflects the guidance of paragraph C4464-2a concerning reasonable hours of travel or whether that schedule should be modified to reflect the fact that Mr. Beierle and his wife actually traveled aboard an air carrier that departed shortly before midnight.

Essentially the same question was addressed in Matter of Bray, P-200305, April 23, 1981. In holding that the constructive travel itinerary used to determine Mr. Bray's transportation and per diem entitlements should be based on a Friday morning departure from his temporary duty station, we held that his willingness to take a later flight on Thursday night in order to indirectly route his return travel did not warrant a modification in that itinerary. We pointed out that it would be unreasonable to assume that he would have scheduled his return travel at a late hour if he had not taken leave but returned to work that day.

In Mr. Beierle's case the late night departure from Honolulu does not warrant the conclusion that it would be reasonable to schedule his travel at that hour 2 days earlier for the purpose of establishing his entitlement to per diem on a constructive cost basis. Specifically, it is appropriate to take into account the fact that Mr. and Mrs. Beierle's actual departure followed two days of rest, a circumstance that most certainly affected their willingness and ability to travel on their own time during hours normally allocated to rest. Mr. Beierle's per diem entitlement, therefore, should be determined on the basis of the constructive itinerary, including departure

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from Honolulu at 9 a.m. on October 25, which the Army has indicated it would normally apply to travel from Kwajalein by way of Hawaii, Mr. Beierle also may be reimbursed for taxi fares and baggage handling costs otherwise allowable in connection with an overnight stop in Hawaii.

for Milton J. Fowler
Comptroller General
of the United States