Pim L 24392

DECISION

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

FILE: B-207039 **DATE:** March 1, 1983

MATTER OF: James E. Dorman - Actual Subsistence Expenses

DIGEST:

1. An Internal Revenue Service employee who had been in an actual subsistence expense travel status requested reimbursement for drycleaning expenses incurred before departure and after return from official travel. The Federal Travel Regulations permit reimbursement of an employee's expenses on an actual subsistence expense basis only for expenses which are incurred during official travel. Since these expenses were incurred before and after the employee was in a travel status, they are not reimbursable.

2. The IRS's determination that the employee's meal claims were exorbitant, based on agency guidelines requiring the claim for reimbursement for meal costs to be reasonable and limiting reimbursement for meals to a percentage of the maximum statutory rate, is upheld since there is no evidence that the IRS's guidelines were arbitrary and capricious or that the employee was required to spend more than the guidelines permitted due to unusual circumstances.

3. The IRS's disallowance of the employee's claim for reimbursement for dinner purchased in travel status after an airplane flight on which a dinner was served is upheld since no justifiable reasons for employee not partaking of the airline meal have been offered.

This decision is in response to an appeal filed on behalf of Mr. James E. Dorman by his authorized

representative, Ms. Lucinda A. Bendat, Assistant Counsel of the National Treasury Employees Union, San Francisco, California. Mr. Dorman, an employee of the Internal Revenue Service (IRS), is appealing the determination reached by our Claims Group in Settlement Certificate Z-2830683, June 16, 1981, denying his claim for reimbursement for expenses of drycleaning and for additional reimbursement for meals, which he incurred incident to temporary duty in Seattle, Washington. For the following reasons, we concur in the determination reached by our Claims Group in disallowing Mr. Dorman's claim.

Mr. Dorman, whose permanent duty station is Fresno, California, went to Seattle from June 4 to June 6, 1980, to attend the IRS Western Region Preparers Seminar. Because he was to make a presentation at the seminar, he decided it was necessary to take a sport coat, which he claims he never wears at his permanent duty station. Prior to the trip, he had the sport coat drycleaned. The drycleaning expenses for which he is claiming reimbursement include the cost of cleaning his sport coat and the expense he incurred in having his raincoat cleaned upon his return. The IRS denied Mr. Dorman's claim on the basis that the drycleaning charges were personal expenses, not incurred as a part of his official travel.

We agree with the IRS. Because Mr. Dorman traveled to Seattle, a high-rate Geographical Area (HRGA), he was in an actual subsistence expense status. See Federal Travel Regulation, FPMR 101-7, para. 1-8.6 (May 1973) (FTR). Paragraph 1-8.1a of the FTR provides that agencies, "* * * shall authorize or approve reimbursement for the actual and necessary subsistence expenses of a traveler incurred during official travel * * *." (Emphasis added.) In a recent case involving an IRS employee who claimed reimbursement for laundry expenses incurred after his travel status ended, we held that even though the employee's need to have his laundry done arose while he was in an official travel status, he

could not be reimbursed for laundry expenses incurred after he returned from his temporary duty assignment. See Carl J. Schultz, B-207563, September 8, 1982.

Although it is clear that this case prevents reimbursement to Mr. Dorman for the cost of drycleaning his raincoat, we believe it also prevents reimbursement of the cost of drycleaning the sport coat, because the expense was incurred prior to Mr. Dorman's entrance into a travel status.

However, Ms. Bendat also makes the argument that the cost of cleaning the sport coat should be reimbursed according to our decision in 48 Comp. Gen. 48 (1968). In that decision we held that Secret Service agents could be reimbursed the rental charges for formal dress attire they were required to wear for security purposes while protecting individuals at formal functions, rather than for the purpose of being attired in a socially acceptable manner. We do not feel that a sport coat meets the test of that decision, and is, rather, the type of wearing apparel an employee is reasonably expected to furnish at his own expense, as part of the personal equipment necessary for him to perform the regular duties of his position. It should also be noted that the IRS has stated that no particular attire was specified for Mr. Dorman's presentation to the seminar. Reimbursement for the rental or purchase of a sport coat would not permitted under 48 Comp. Gen. 48 (1968), or under FTR paragraph 1-9.1(d), which provides for reimbursement of miscellaneous expenditures necessarily incurred by a traveler in connection with official business. Therefore, the expense of cleaning Mr. Dorman's sport coat is not reimbursable.

Mr. Dorman also reclaimed amounts relating to his meals on June 6, 1980, the day he returned from temporary duty. On that day, Mr. Dorman claimed $10.29

and $12.92, not including tips, for breakfast and lunch. Although a dinner was served on his flight from Seattle to San Francisco, Mr. Dorman paid $11.93 for dinner at the San Francisco Airport on a layover prior to the final leg of his return trip. The IRS reduced Mr. Dorman's total claim of $42.10 for June 6, to $14.50 for breakfast and lunch and a bellhop tip, completely disallowing any reimbursement for the dinner meal.

The IRS reduced Mr. Dorman's claim for reimbursement for breakfast and lunch costs on the grounds that the prices of the meals were exorbitant and expenditure of that amount was not the action of a prudent person. The IRS reached this conclusion by applying Internal Revenue Manual paragraph 334, which requires that claims for reimbursement of meals be reasonable and creates a general rule limiting the amount considered reasonable for meals to 45 percent of the maximum authorized actual subsistence rate. The maximum rate for Seattle in June 1980, was $50, thus making the maximum reimbursement for meals $22.50.

An employee is entitled to reimbursement for only reasonable expenses incurred incident to a temporary duty assignment since travelers are required by paragraph 1-1.3a of the FTR, to act prudently in incurring expenses. In applying this requirement to claims for reimbursement of various types of travel expenses, this Office has consistently held that it is the responsibility of the employing agency to make the initial determination as to the reasonableness of the claimed expenses. See, for example, Micheline Motter and Linn Huskey, B-197621, B-197622, February 26, 1981. Where the employing agency has made the initial determination of reasonableness, this Office will overturn the agency's determination only where our review of the evidence results in a finding that the agency's determination was clearly erroneous, arbitrary or capricious. Norma J. Kephart, B-186078, October 12, 1976. The burden is on the employee to prove that the agency's determination is defective. See 4 C.F.R. § 31.7 (1982).

In Kephart, we suggested that agencies should consider issuing written guidelines, under the authority of paragraph 1-8.3b of the Federal Travel Regulations, to serve as a basis for review of an employee's expenses. In Harry G. Bayne, 61 Comp. Gen. 13 (1981), we approved as reasonable a guideline setting the maximum amount for meals and miscellaneous expenses as 46 percent of the statutory maximum, but stated that such a guideline could not operate as an absolute bar to payment of additional amounts when those amounts were justified by the employee on the basis of unusual circumstances.

Mr. Dorman's representative claims that the IRS's allowance of $6 for breakfast and $7 for lunch was arbitrary and capricious because it was not based on any actual or objective evidence about the cost of meals in the Seattle area. She asserts that the allowance of $6 for breakfast was particularly arbitrary in light of the IRS's allowance of $7.75 for Mr. Dorman's breakfast on the previous day. This latter point adds little to Mr. Dorman's argument since his lunch claim for the previous day was $3.27 and his dinner claim was $12.31 adding to a total claim for meals of $23.33, which, when added to his lodging expenses of $36.86, gave Mr. Dorman a total claim for the day of $60.19, far in excess of the maximum allowable reimbursement of $50. Thus, there was no need for that day to consider the amounts claimed for individual meals.

We do not think it is unreasonable for IRS to limit reimbursement for meals and miscellaneous expenses to 45 percent of the maximum rate, an amount determined by the General Services Administration to be adequate to cover an employee's subsistence expenses in Seattle. The evidence submitted in support of Mr. Dorman's claim does not convince us that IRS's determination was arbitrary or capricious. Rather it appears the IRS made its determination according to a consistent agency standard. Nor does the evidence submitted show that Mr. Dorman was required by unusual circumstances to

spend the amounts he claimed so as to require the IRS to make an exception and reimburse him.

Mr. Dorman's reclaim also includes the cost of dinner he purchased at the San Francisco Airport. The IRS denied his claim on the basis of our holding in Bennie L. Pierce, B-185826, May 28, 1976, where we held that:

> "When meals are included in the price of an airline ticket and in fact are provided during the course of a flight, it is not proper to allow reimbursement for duplicate meals purchased after the traveler leaves the plane, in the absence of justifiable reasons why the traveler did not partake of the meals served on the flight or, if he did so, why extra meals were required."

Mr. Dorman's flight from Seattle to San Francisco departed at 4 p.m. and arrived at 5:46 p.m. A dinner meal was served at 4:45, but Mr. Dorman consumed only dessert and coffee. He ate a full dinner at the San Francisco Airport prior to the departing on the final leg of his travel, a flight to Fresno which left at 7:15 p.m. The reasons Mr. Dorman gives for eating dinner at the airport rather than on the plane are that: he was not hungry, since he was originally supposed to leave on an earlier flight which did not serve a meal, and he, therefore, ate a later and larger lunch than usual; the meal on the plane was served earlier than his usual dinner hour; and the meal served was unappetizing to him.

In James H. Morrill, B-192246, January 8, 1979, we allowed an employee's claim for dinner purchased upon his arrival at a temporary duty site after traveling on an airplane flight on which dinner was served. In that case the employee ate a late lunch because of his

official duties, the dinner meal was served at 3:30 p.m., well before the normal dinner hour, the employee was scheduled to arrive earlier than the normal dinner hour at his destination, and the travel through three time zones resulted in extending the traveler's day by 3 hours. Although the facts of this case seem to parallel those of Mr. Dorman's case, in the former case, the employee's late lunch was necessitated by official duties, and the dinner meal was served at 3:30 p.m. In addition, the facts can be distinguished from those of Mr. Dorman's case because Mr. Dorman did not arrive before the normal dinner, nor was his day extended by travel through different time zones. Mr. Dorman's final reason for not eating the airline meal--that it was unpalatable--is not a "justifiable reason" for such action. See Jesse A. Atkins, B-193504, August 9, 1979. We have found no evidence upon which we can base a determination that "justifiable reasons" existed for Mr. Dorman's purchase of dinner after his flight, and, therefore, we sustain the determination of our Claims Group with regard to this portion of the claim as well as the others previously discussed.

Milton J. Socolar
for Comptroller General
of the United States

official duties, the dinner meal was served at 3:30 p.m., well before the normal dinner hour, the employee was scheduled to arrive earlier than the normal dinner hour at his destination, and the travel through three time zones resulted in extending the traveler's day by 3 hours. Although the facts of this case seem to parallel those of Mr. Dorman's case, in the former case, the employee's late lunch was necessitated by official duties, and the dinner meal was served at 3:30 p.m. In addition, the facts can be distinguished from those of Mr. Dorman's case because Mr. Dorman did not arrive before the normal dinner, nor was his day extended by travel through different time zones. Mr. Dorman's final reason for not eating the airline meal--that it was unpalatable--is not a "justifiable reason" for such action. See Jesse A. Atkins, B-193504, August 9, 1979. We have found no evidence upon which we can base a determination that "justifiable reasons" existed for Mr. Dorman's purchase of dinner after his flight, and, therefore, we sustain the determination of our Claims Group with regard to this portion of the claim as well as the others previously discussed.

Milton J. Socolar
for Comptroller General
of the United States