

**DECISION**

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

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**FILE:** B-212645**DATE:** September 24, 1984**MATTER OF:** Jack C. Smith, et al. - Per Diem on  
Temporary Duty - Government Furnished  
Quarters - Barring Act**DIGEST:**

1. Five employees of the Forest Service claim per diem for temporary duty performed at seasonal worksites in Boise National Forest for periods ranging from October 1, 1976, through November 10, 1982. Claims were received in the General Accounting Office (GAO) on August 9, 1983. Portions of claims of two employees arising prior to August 9, 1977, may not be considered since the Barring Act, 31 U.S.C. § 3702(b) (1982), bars consideration of claims received by GAO more than 6 years after date claims first accrued.
2. Five employees of the Forest Service performed temporary duty at seasonal worksites in Boise National Forest. They were denied per diem allowances because they were furnished Government quarters in lieu of per diem in accordance with Forest Service regulations. Since the employees maintained residences at their permanent duty stations and incurred additional expenses for meals and miscellaneous items during their temporary duty assignments, they are entitled to payment of a reduced per diem.

This decision is in response to a request from Mr. John R. Nienaber, Authorized Certifying Officer, National Finance Center, United States Department of Agriculture, as to whether Mr. Jack C. Smith, and three other employees and a former employee of Boise National Forest, Forest Service, United States Department of Agriculture (David F. Hale, Hugh J. Irish, Walter W. Thomas, and Robert R. Goodin), are entitled to per diem for tours of temporary duty performed at seasonal worksites.

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The issue presented is whether an agency may provide living quarters and utilities to employees on temporary duty in lieu of any payment of per diem allowances. We hold that the claimants are entitled to the payment of reduced per diem allowances, except for the portions of their claims which are time-barred for the periods more than 6 years prior to receipt of such claims by this Office on August 9, 1983.

#### BACKGROUND

The employees are claiming per diem on the basis of our holding in Frederick C. Welch, 62 Comp. Gen. 80 (1982). In the Welch case, a Forest Service employee was assigned to a seasonal worksite for 6 months and furnished Government quarters, while at the same time he maintained a home at his official duty station, and thus incurred additional expenses while at the seasonal worksite. We agreed with the Grievance Examiner's determination that the employee was in a temporary duty status and was entitled to per diem in accordance with the regulations of the Forest Service.

The agency, through officials of the Boise National Forest, has stated that in cases where summer and winter duty stations are involved, it has always considered the winter station as the official duty station and the summer station as a temporary duty station. The agency also states that for several years it has issued personnel actions at the beginning of the season transferring the employees to the summer station, and then it has transferred them back to the winter station in the fall. The agency states that these personnel actions were in error because its intent was that the winter station remain the official duty station and the summer station a temporary one.

The agency does not believe that the Welch case is applicable to the present claims since, unlike the situation in the Welch case, it never considered any of its employees to have dual duty stations. Further, the agency furnished the employees housing (including utilities) in lieu of per diem for the time spent at the summer duty station in accordance with paragraph 1-1.3c(1) of the Forest Service Handbook 6509.33, which has been in effect since 1973. The agency says that this management option was provided them by the Forest Service Manual 6445.6-6, which states that "an employee in travel status may be furnished seasonal housing in lieu of per diem."

The site of the summer duty station, located in Lowman, Idaho, is 74 miles from Boise, Idaho, over a paved, well-maintained road. The agency reports that the houses at Lowman are basic but well maintained and include indoor plumbing, electric lights, hot and cold running water, gas heating, refrigerators, stoves, and other basic furniture to insure comfortable living.

The agency issued a personnel action in April 1978 transferring Mr. Hale to Lowman, Idaho, and did not issue a personnel action returning him to Boise until May 1983. However, the agency states that this was an error and that Mr. Hale's official duty station during this period of time was Boise. A similar situation also occurred in the case of Mr. Thomas. The case of Mr. Goodin differs slightly from the other cases in that his official duty station was Mountain Home, Idaho, and his temporary duty station was Lester Creek, Idaho. However, the agency says that this situation is comparable to the Lowman site. Mr. Goodin is no longer employed by the Forest Service.

Since the issuance of the Welch decision, the agency has negotiated an agreement with the union whereby it has agreed to pay a "field rate" per diem, currently \$11 per day, while employees are assigned to their summer duty stations.

With this background in mind, the certifying officer asks the following questions:

"1. Would the fact that the Forest had written regulations available to all employees indicating that employees would be furnished housing in lieu of per diem, while at their summer duty station, preclude payment of the enclosed claims?

"2. On the claims where a personnel action was never issued returning the employees to Boise, would Lowman be considered their permanent duty station, thus precluding payment of per diem?

"3. Since the Forest, subsequent to the issuance of the Welch decision, negotiated an agreement to allow employees per diem while at the summer duty station, [does this] indicate that their past policy was in error thus allowing the claims for per diem."

OPINION

BARRING ACT

The Barring Act of October 9, 1940, as amended, now codified at 31 U.S.C. § 3702(b) (1982), provides that every claim or demand against the United States presented to the General Accounting Office (GAO) must be received in GAO within 6 years from the date the claim first accrued. The record shows that portions of the claims asserted by Messrs. Smith (May 12, 1977) and Hale (October 1, 1976) arose prior to August 9, 1977, since the employees first began serving at Lowman on the earlier dates. Even if these portions of the claims might otherwise be valid, they are barred and may not be considered by this Office since they accrued more than 6 years prior to the date (August 9, 1983) the claims were received by GAO.

ENTITLEMENT TO REDUCED PER DIEM ALLOWANCES

Prior to addressing the specific questions asked by the certifying officer, we note that the failure of agency officials to issue formal personnel actions to Messrs. Hale and Thomas transferring them from Lowman (temporary duty station) to Boise (official duty station) does not affect the status of the employees' worksites. The determination of what constitutes an employee's permanent duty station or headquarters is a question of fact and is not limited by administrative determination. An employee's headquarters has been construed to be the place where the employee expects to spend the greater part of his time. Such a determination is made based upon the employee's travel orders and where necessary, from the character of the assignment, particularly the duration of the assignment and the nature of the duty performed. Welch, supra, and cases cited therein.

The facts show and the agency admits that the failure to issue personnel actions returning Messrs. Hale and Thomas to their official duty post, Boise, was an administrative error. Further, it is clear that both the agency and the employees regarded the assignments as being temporary, and regarded Boise, the permanent residences of the employees, as their official duty station. Also, the employees lived in seasonal facilities at Lowman while maintaining their permanent residences in Boise. We shall therefore regard Boise as their official duty station and Lowman as their temporary duty post even though personnel actions were not issued returning Messrs. Hale and Thomas to Boise. Question 2 is therefore answered, "no." As to Mr. Goodin, we shall consider his claim along with the other

four employees inasmuch as his situation, though occurring at different worksites, is analogous to the claims arising at the Boise-Lowman worksites.

The general statutory authority for the payment of per diem allowances is contained in 5 U.S.C. § 5702 (1982) and provides, in pertinent part, that "an employee while traveling on official business away from his designated post of duty \* \* \* is entitled to \* \* \* a per diem allowance \* \* \*. The implementing regulations, Federal Travel Regulations, FPMR 101-7 (September 1981), provide, at paragraph 1-7.1a, that "[p]er diem allowances \* \* \* shall be paid for official travel." Thus, federal employees have a basic statutory entitlement to be paid per diem allowances while traveling on official business away from their official duty stations. At the same time, paragraph 1-7.3a of the FTR states that it is the responsibility of the agency to authorize only such per diem allowances as are justified by the circumstances affecting the travel. Further, we have upheld the refusal by an agency to authorize or approve the payment of any per diem where the employee was performing temporary duty in close proximity to his official duty station for a relatively short period of time, and where the employee incurred no additional expenses. See 55 Comp. Gen. 1323 (1976); 31 Comp. Gen. 264 (1952); B-176477, February 1, 1973.

In the situation where an employee is performing temporary duty a substantial distance from his or her permanent duty station, our decisions have recognized that the required use of Government quarters, with a consequent lowering of the rate of per diem, is permissible where an appropriate administrative determination has been made that the use of Government quarters is essential to the accomplishment of the mission of the employee. B-177752, May 17, 1983. The record in this case reveals that the agency has made such a determination because of inadequate housing facilities for its employees in Lowman.

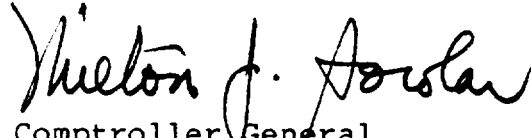
This Office has denied the payment of any per diem where the employees incurred no additional living expenses or were provided both quarters and meals. B-180111, March 20, 1974; Barbara J. Protts, B-195658, March 19, 1980. However, we have also held that it is unreasonable to deny the payment of a per diem allowance where the employee has incurred additional expenses over those he or she would have normally incurred had he or she remained at his or her designated post of duty. 28 Comp. Gen. 192 (1948); 24 Comp. Gen. 179 (1944); B-161048, April 11, 1967.

B-212645

We believe that the latter decisions are applicable here. In arriving at this conclusion, we point out that FTR paragraph 1-7.6f applies where meals and/or lodging are furnished without charge or at a nominal cost by an agency at a temporary duty station, and it states that an appropriate reduction shall be made from the authorized per diem rate. Again, the payment of a per diem allowance, though reduced, is contemplated. Only in the unusual circumstance where the employee has not incurred any additional living expenses is an agency justified, under the law and regulations, in not paying any per diem allowance.

With respect to the instant claims, additional expenses were, in fact, incurred by the five employees in that they were required to eat in restaurants and purchase groceries in Lowman while still maintaining their own residences in Boise. Further, groceries and other items were priced significantly higher in Lowman than in Boise. Thus, failure to pay the employees any per diem allowances was an unreasonable exercise of the agency's discretionary authority to restrict the payment of per diem where the employees incurred additional expenses by virtue of their temporary duty assignments. We therefore conclude that the employees are entitled to the payment of reduced per diem allowances. Question 1 is answered in the negative and, therefore, we need not discuss the effect of the negotiated rate of per diem as presented by Question 3.

Accordingly, Messrs. Jack C. Smith, David F. Hale, Hugh J. Irish, Walter W. Thomas, and Robert R. Goodin, are entitled to payment of reduced per diem allowances at the prevailing "field rates" in effect for the periods during which they performed temporary duty at Lowman and Mountain Home, Idaho, except for periods of time prior to August 9, 1977, which are barred from consideration by the provisions of the Barring Act, 31 U.S.C. § 3702(b) (1982).

*for*   
Comptroller General  
of the United States