

DECISION



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

FILE: B-212967

DATE: May 23, 1984

MATTER OF: Stephen A. Bartholomew

DIGEST:

Based on language in the 1982 amendment to Federal Travel Regulations, paragraph 2-5.4c referring to "maximum per diem rate prescribed for the locality" the employee argues that temporary quarters subsistence expense reimbursement should be based on the high cost geographic area rate used when reimbursement of actual costs while on temporary duty is authorized rather than the statutory per diem rate of \$50. Although the regulation could be misinterpreted, the statute authorizing temporary quarters sets a ceiling on the amount payable by reference to the maximum per diem rate, not the actual subsistence rate. Therefore, reimbursement of temporary quarters subsistence expense is limited to \$50 within the continental United States. Paragraph 2-5.4c has since been changed to make this clear.

The sole issue for resolution is whether the \$50 statutory limitation on per diem is applicable to claims for temporary quarters subsistence expenses when the employee occupies temporary quarters in a high rate geographic area.¹ The employee argues that the limitation should be the \$75 authorized under 5 U.S.C. § 5702(c)(2) for the high rate geographic area where the temporary quarters are located. The agency maintains that the allowance must be limited to the \$50 maximum per diem rate set by 5 U.S.C. § 5702(a). We hold that the \$50 maximum per diem rate must be applied to reimbursement for subsistence while occupying temporary quarters.

¹Jutta Partyka, an authorized certifying officer of the Office of Surface Mining, United States Department of the Interior, has submitted a voucher on behalf of Mr. Stephen A. Bartholomew for an advance decision on this issue.

Mr. Stephen Bartholomew transferred within the United States Department of the Interior effective November 28, 1982, from the National Park Service in St. Croix Falls, Wisconsin, to the Office of Surface Mining, in Greentree, Pennsylvania. He was authorized the usual relocation expenses incident to the transfer, including a temporary quarters subsistence allowance. He occupied temporary quarters for the full 30 days authorized, beginning December 13, 1983, and continuing beyond January 11, 1984, the last day for which he was entitled to reimbursement. Mr. Bartholomew submitted a voucher seeking, among other things, reimbursement for 30 days' temporary quarters subsistence expenses based on the high cost geographic area rate of \$75 per day applicable to the locality of the temporary quarters. The agency disallowed \$741.54 of the amount claimed on the basis that reimbursement for temporary quarters subsistence expenses is limited to the \$50 statutory per diem maximum.

Mr. Bartholomew submitted a reclaim voucher in which he argued that an amendment to the Federal Travel Regulations (FTR) (FPMR 101-7) permits the use of high cost geographic area rates in computing the temporary quarters subsistence allowance. He quotes the following explanation of changes accompanying the amendment to the Federal Travel Regulations:

"Paragraph 2-5.4c is revised to allow temporary quarters subsistence allowance reimbursement to the employee for the first 10-day period up to the maximum per diem rate prescribed for the locality (e.g., conterminous United States or nonforeign area) in which the temporary quarters are located instead of the current 75-percent limitation." (Underscoring supplied.) 47 Fed. Reg. 44565, at p. 44567 (October 8, 1982).

He contends that the underscored language authorizes reimbursement on the basis of rates authorized for high cost geographic areas. The agency counters that the sole purpose of the amendment to FTR paragraph 2-5.4c was to authorize the payment of expenses up to the maximum per diem rate for the first 10 days temporary quarters are occupied, whereas the regulations previously had limited reimbursement to 75 percent of the maximum per diem rate.

B-212967

It appears that the basis for Mr. Bartholomew's arguments is that the phrase in FTR paragraph 2-5.4c "per diem rate prescribed for the locality in which the temporary quarters are located" refers to the high rate geographic areas listed in FTR, Appendix 1-A. Such an interpretation is precluded by the statute authorizing temporary quarters.

Reimbursement for subsistence expenses while occupying temporary quarters is authorized by 5 U.S.C. § 5724a(a)(3). That subsection provides for reimbursement of subsistence expenses of the employee and his immediate family for up to 30 days while occupying temporary quarters under certain conditions not relevant here. The subsection also provides for a ceiling on the amount payable:

" * * * The regulations shall prescribe average daily rates for subsistence expenses per individual, not in excess of the maximum per diem rates prescribed by or under section 5702 of this title, for the location in which the temporary quarters are located. * * *"

Note that the limitation is expressed in terms of per diem. Per diem is limited by section 5702(a) to \$50 per day. Under 5207(c), reimbursement of up to \$75 may be made for actual expenses. There is a basic distinction between the terms per diem and actual expenses. Per diem refers to a specified daily rate intended to cover expenses incurred while traveling on official business. Actual expenses relates to reimbursement on an itemized basis of actual and necessary expenses of official travel. The two terms are not interchangeable as each has a distinct meaning and originates in different subsections of 5 U.S.C. § 5702. Had the Congress intended to set the limitation for subsistence expenses while occupying temporary quarters at the actual subsistence rate, currently \$75, it could have used that term in section 5724a(a)(3). Instead, the phrase "maximum per diem rates" was used. Therefore, we hold that as a matter of law, reimbursement of subsistence expenses while occupying temporary quarters is limited by the maximum per diem rate established by 5 U.S.C. § 5702(a).

To the extent that others may have been confused by the language of subparagraph 2-5.4c the General Services

B-212967

Administration has amended that language to make it clear that the statutory per diem rate of \$50 is to be used for computing an employee's maximum temporary quarters subsistence expense entitlement within the continental United States. Subparagraph 2-5.4c(1) as amended by Supplement 10 (49 Fed. Reg. 13920) now specifically provides:

"(1) Applicable maximum per diem rates. The maximum per diem rate to be used for computations under (2) through (4), below, shall be the maximum per diem rate prescribed for the locality in which the temporary quarters are located, as follows:

"(a) For temporary quarters located in the coterminous [sic] United States, the applicable maximum per diem rate is \$50.

"(b) For temporary quarters in applicable locations outside the conterminous United States, the maximum per diem rate is the rate prescribed for the locality by the Secretary of Defense or by the Secretary of State as provided in 1-7.2b or c."

Accordingly, we hold that the claim was properly denied.

Wilton J. Fowler
for Comptroller General
of the United States