



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

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D-175744

June 6, 1973

Mr. LeRoy T. Buchanan
309 Sumter Street
Portsmouth, Virginia 23702

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Dear Mr. Buchanan:

We refer to your letter received in this Office on January 10, 1973, which requests, in effect, that we reconsider the August 24, 1972 action of our Transportation and Claims Division wherein your claim for additional per diem allowance in connection with temporary duty you performed at the Philadelphia Naval Shipyard was disallowed. In accordance with your request we have reviewed the entire file relative to your claim.

The record indicates that you were one of a number of employees of the Norfolk Naval Shipyard who were assigned temporary duty at the Philadelphia Naval Shipyard during late 1969 and early 1970. Your travel orders for that duty, and the amendments thereto, provided for the payment of per diem at the rate of \$25 for the first 8 days, \$22 for the next 22 days, and \$18 thereafter until March 2, 1970, from which time until the end of your temporary duty the per diem rate was established at \$22. It is also indicated that as the result of an appeal to the Office of Civilian Manpower your per diem rates were reviewed and the Department of the Navy increased the per diem payable to you and other claimants from \$25 per day for the first 8 days to \$25 per day for the first 30 days of the temporary duty and you were paid an additional amount of \$66.

It is your contention, however, that others working at the shipyard never had their per diem reduced to the lower rate of \$18 and you state that you can't understand how the cost of living can jump from \$25 per day down to \$18 per day and then back up to \$22, thus justifying the corresponding jumps in the per diem rates. Therefore you are seeking to have your per diem rate adjusted to \$22 per day for those days that you were paid at the \$18 rate.

The applicable regulations governing the payment of per diem in connection with travel and temporary duty are found in chapter 8, Volume 2 of the Joint Travel Regulations (JTR). Those regulations, as

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in effect at the time of your assignment, prescribed a maximum per diem rate of \$25, but paragraph CB051-1 thereof provided in pertinent part as follows:

* * * A rate of per diem may be the legal maximum per diem rate or a reduced amount. Authorization will be for only such per diem allowances as are justified by the circumstances affecting the travel. To this end, care should be exercised to prevent the fixing of a per diem allowance in excess of that required to meet the necessary authorized expenses. * * *

Further, as was pointed out in our Transportation and Claims Division letter, under paragraph CB051-3 a reduced per diem rate was also authorized when the temporary duty assignment was for an extended period of time and less than the maximum per diem rate could be factually justified for all or part of that time. Paragraph CB051-4 provided as follows:

4. PROLONGED TEMPORARY DUTY ASSIGNMENTS. When the duration of a temporary duty assignment will exceed 2 months and a permanent change-of-station movement is found to be inappropriate, the per diem allowance authorization will be re-examined at the end of each month of assignment to determine whether continuation of an allowance in effect should remain unchanged or a different rate for subsequent duty should be authorized. An examination is not required when Government quarters will be used or special facility arrangements are made in advance, or when factual information, available at the time of initial assignment, provides a basis for authorizing an appropriately reduced per diem allowance for the period of duty. * * *

Thus, the cited regulations require a periodic administrative examination of the prescribed per diem allowance in cases of a prolonged temporary duty assignment such as yours. According to the record, it was determined that there was insufficient factual information to provide a basis for less than the full \$25 per diem rate for the first 50 days of your assignment and therefore the per diem for that period was increased. Thereafter, however, reduced rates were authorized on the basis of extensive surveys of available accommodations in the Philadelphia area and the cost of such accommodations over prolonged periods.

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When, during the course of your temporary duty assignment an examination showed that an increase in the rates was justified, the per diem allowance was increased from \$18 to \$22. Since the rates were administratively determined at the time of your duty in accordance with the appropriate provisions of JTR, the action of our Transportation and Claims Division in disallowing your claim for additional per diem must be sustained.

We have no factual information concerning your allegation that others assigned to the Philadelphia Shipyard never had their per diem reduced to the \$18 rate. However, from the record it would appear that the other employees from the Norfolk Shipyard who were on the same extended assignment as you were authorized the same per diem rates.

Regarding the last paragraph of your letter of January 10 inquiring as to further appeal of your claim, we point out that the decisions of this Office are binding upon the executive departments and agencies of the Government and the law provides for no appeal from decisions of the Comptroller General. As to matters cognizable by the United States District Courts and the United States Court of Claims, see 28 U.S.C. 1346 and 1491.

We also have received your letter of April 29, 1973, enclosing a clipping from a newsletter indicating that travelers to Long Beach, California, and Philadelphia, Pennsylvania, have been told they will receive per diem in lieu of subsistence at the rate of \$25 for previous assignments to those locations. A copy of our recent decision in the Long Beach case, B-177431, February 23, 1973, is enclosed, wherein payment of claims for additional per diem at Long Beach was authorized on the basis that proper surveys of lodging costs had not been made. However, claims similar to yours for additional per diem at Philadelphia have been disallowed for the reason that the reduced per diem rates were predicated on proper surveys such as were made in your case.

Sincerely yours,

For the **PAUL G. DEMBLING**
Comptroller General
of the United States