



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Dennis W. Hancock

File: B-260907

Date: January 26, 1996

DIGEST

A Certifying Officer for the Department of Defense (DOD) asks whether the agency may reimburse an employee for lodging expenses he incurred while on a temporary duty (TDY) assignment. The claims may not be paid. The employee did not stay in government-leased quarters, although they remained available for him. Section 1589 of title 10, United States Code, prohibits the reimbursement of lodging expenses for DOD employees when adequate government quarters are available, but are not used.

DECISION

A certifying officer of the Department of Defense Finance and Accounting Service requests an advance decision on lodging claims submitted by Mr. Dennis W. Hancock, an employee of the Department of the Navy, for lodging expenses he incurred after vacating government-leased quarters. In addition, the agency states that Mr. Hancock erroneously received lodging expenses, and that he is indebted in the amount of \$6,922.22. The claims may not be paid, and Mr. Hancock is indebted for the balance due of \$6,922.22.

BACKGROUND

At the time he incurred the lodging expenses at issue here, Mr. Hancock was serving as an Engineering Technician. Although the agency designated his official duty station as Puget Sound Naval Yard, his specific job was to serve as the On-Site Representative (OSR) to the Naval Air Station, North Island, California. He occasionally traveled to other installations. The OSR acts as a liaison between the design division at Puget Sound and various ship repair facilities. The position description for an OSR Engineering Technician states "Travels as necessary to perform duties."

On April 8, 1993, Mr. Hancock began a temporary duty (TDY) assignment at North Island, which is near San Diego, that, through a number of extensions, did not end until December 23, 1994. Because Mr. Hancock is a single parent with two children,

personnel from Puget Sound and North Island sent letters to the Central Travel Unit requesting special accommodations for Mr. Hancock.

After a stay in Bachelor Officer's Quarters (BOQ), and a short TDY assignment, Mr. Hancock obtained private lodgings for himself and his children on May 28 at the Oakwood Coronado Corporate Apartments, which he paid for himself. Subsequently, the Navy arranged a direct lease of the apartment for Mr. Hancock for the period July 1 through December 22, 1993, at a monthly rate of \$1,591.00.

Because of problems with his children, which are not detailed in the record, the apartment's contract housing manager notified Mr. Hancock that he was being evicted. Mr. Hancock remained in the apartment until the end of December and then arranged for other lodgings for himself and his children for the duration of his TDY at North Island. Mr. Hancock did not obtain a certificate indicating that government quarters were not available in BOQ or elsewhere.

A statute applicable to the Department of Defense (DOD), prohibits that agency from using its available funds to pay the lodging expenses of its civilian employees on official travel "where adequate Government quarters are available but are not occupied by such employee or person." 10 U.S.C. § 1589. Quarters leased from private contractors are considered government quarters for the purpose of this statute. See Katherine H. Briley, B-256982, June 10, 1994, reversed on other grounds, B-256982.2, Jan. 17, 1995, and Robert Samalis, B-252291, June 18, 1993. Consequently, after he left the Oakwood apartments, the agency did not authorize reimbursement for lodgings and, instead, limited his reimbursement to 55 percent of the rate for miscellaneous and incidental expenses (M&IE).

The Commander, Puget Sound Naval Shipyard, states that, based on the extensive travel required for his position, Mr. Hancock should have been authorized to stay in nongovernment quarters under the authority of a regulatory exception to the statute.¹ This exception permits reimbursement for nongovernment quarters "when it is determined by the DOD component concerned that an employee's duties will require official travel in excess of 50 percent of the total number of the employee's basic administrative work weeks during the current fiscal year." 2 Joint Federal Travel Regulation (2 JTR), para. C1055-A-4 (Ch. 343, May 1, 1994.). According to the Commander, the travel order, simply by authorizing travel for more than 50 percent of Mr. Hancock's administrative workweeks, represents the agency's

¹The regulation is similar to and promulgated pursuant to the statutory exception in 10 U.S.C. § 1589(b).

determination that he is exempt from the requirement to stay in government quarters.²

Furthermore, the Commander states that Mr. Hancock was told that he (Mr. Hancock) could procure private lodgings at a monthly rate up to \$1,400 and that Mr. Hancock relied in good faith on this advice when he obtained private lodgings following the eviction. However, this was not noted on Mr. Hancock's travel orders.

The certifying officer, on the other hand, states that if adequate government quarters are available, but unused, the lodging portion of per diem is zero. Government-contracted quarters were available up to the period of eviction, and Mr. Hancock did not submit a nonavailability statement of BOQ for the period after eviction.

OPINION

Generally, dependents who accompany an employee on temporary duty must travel at the employee's expense. B-148529, May 18, 1962; See also Geoffrey Arn, B-192548, Nov. 23, 1979. Therefore, with regard to Mr. Hancock's claims, we may consider only the reimbursement to which he was entitled as if he was traveling alone.

As we noted above, DOD employees generally are expected to lodge in government quarters, when available. The exceptions authorized by 2 JTR all require the component involved to justify the decision to exempt an employee from this requirement. In the case of the exception noted above, 2 JTR provides further:

"[T]he requirement to use available Government quarters is not applicable to an employee who is identified by the DOD component concerned as being employed under conditions in which normal duties require official travel in excess of 50 percent of the total number of the employee's basic administrative work weeks during the current fiscal year. . . . The identification required by this subparagraph may be by statement in the related travel order, or an amendment thereto, or by such other means desired by the Service concerned." 2 JTR, para. C1055 (Ch. 343, May 1, 1994).

²The regulation noted above permits three other exceptions not applicable here that permit DOD employees to be reimbursed for private lodgings when government quarters are available.

According to the Finance Office, although there is no Navy regulation requiring that the identification required by 2 JTR be done in a particular way, the Navy practice is to note this identification on the employee's travel order. In this case, the appropriate DOD component at Puget Sound did not indicate on Mr. Hancock's travel orders that he was exempt from the requirement to stay in government quarters. Nonetheless, as we noted above, the Commander asserts that the travel orders themselves, because they authorized travel in excess of 50 percent of the fiscal year, exempted Mr. Hancock from this requirement. We disagree.

By its own terms, 2 JTR, para. C1055-E requires some affirmative act to identify employees who may be reimbursed for staying in nongovernment quarters. Moreover, the regulation does not prohibit agencies from authorizing government quarters for employees who otherwise might be exempt under para. 1055-E. For any number of reasons related to cost, efficiency or the nature of the assignment, DOD components still may choose to require an employee to lodge in government quarters, if available. This may be especially relevant for employees who, like Mr. Hancock, perform extended TDY at one location, in contrast to employees who are frequently checking into and out of installations.

Accordingly, since no determination had been made to designate Mr. Hancock as exempt under 2 JTR, para. C1055-E, and because unoccupied government quarters remained available for him, he may not be reimbursed for the lodging expenses he incurred after he moved out of the Oakwood apartment. Mr. Hancock is also liable for the amount he was erroneously reimbursed for lodging expenses.

However, under the circumstances of this case, the agency may wish to consider the amount of the erroneous overpayment for waiver under the provisions of 5 U.S.C. § 5584, and in accordance with the provisions of 4 C.F.R. part 91.

/s/Seymour Efros
for Robert P. Murphy
General Counsel