

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

FILE: B-181891

DATE:

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JUL 16 1975

MATTER OF: Joseph S. Henderson - Home service transfer allowance

DIGEST:

Foreign Service officer who was transferred between overseas assignments to Washington, D.C., may not be paid home service transfer allowance under 5 U.S.C. § 5924 since officer who resided with friends did not incur lodging expenses as such and meal costs incurred are specifically excluded by regulation. Furthermore travel orders may not be modified retroactively so as to authorize per diem allowance unless error is apparent on face of order or facts indicate intended provision was omitted through error.

This action is a response to a letter from Joseph S. Henderson concerning his claim for reimbursement of expenses incurred for temporary quarters and subsistence in connection with a permanent change of station performed as a State Department Foreign Service Officer, following his return from an overseas assignment to Mexico City, Mexico. Claimant requests reconsideration of our Transportation and Claims Division settlement dated May 24, 1974, which disallowed his claim for the reason that an itemization of expenses and receipts could not be furnished by the claimant. Additionally, the record reveals that Mr. Henderson and his wife resided with friends during the time in question and did not incur lodging expenses as such. Therefore, the only expenses claimed were for meals and car rental during that period. Although the claimant requested reimbursement for "food and drink" which he provided his friends, the applicable regulations only allow for reimbursement of expenses incurred by claimant for himself and his family.

The record shows that upon completion of overseas assignment in Mexico City, Mexico, the claimant was transferred to Washington, D.C., pursuant to receipt of Official Travel Authorization No. 0-63111, dated February 18, 1970. Upon arrival at his new duty station on July 5, 1970, in Washington, D.C., claimant and his wife resided at the home of friends in McLean, Virginia, to October 3, 1970, at which time claimant departed for his new Foreign Service assignment in Toronto, Canada. In return for the accommodation provided by his friends, Mr. Henderson stated that he "assumed an obligation to buy food, liquor and meals

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out for all." Mr. Henderson indicates that because he had been advised that he was to be assigned to Washington, D.C., for only a short time, he did not seek permanent housing in the area. The officer also indicates that he paid more than \$600 for car rental as a "direct consequence of lodging in Virginia." Mr. Henderson claims that his expenses while in Washington amounted to more than \$47 per day, of which he attributes \$25 to lodging. A statement obtained by Mr. Henderson from his friends with whom he resided during the time in question indicates that no amount was paid directly to them for lodging costs.

Payment of a home service transfer allowance in connection with service in the United States between foreign assignments is authorized by 5 U.S.C. § 5924. Insofar as pertinent, that section provides:

"The following cost-of-living allowances may be granted, when applicable, to an employee in a foreign area:

* * * * *

"(2) A transfer allowance for extraordinary, necessary, and reasonable expenses, not otherwise compensated for, incurred by the employee incident to establishing himself at a post of assignment in--

* * * * *

"(B) the United States between assignments to posts in foreign areas."

The Department of State's regulations implementing 5 U.S.C. § 5924 appear at section 250 of the Standardized Regulations (Government Civilians, Foreign Areas). Subsection 251.1 thereof in effect at the time the travel was performed reiterates the statutory prerequisite to payment that the assignment in the United States be one between assignments to posts in foreign areas. Specifically, the home service transfer allowance is defined as follows:

"a. 'Home service transfer allowance' means an allowance for extraordinary, necessary, and reasonable expenses, not otherwise compensated for, incurred by an employee incident to establishing himself at a post of assignment in the United States (Sec. 040a) between

assignments to post in foreign areas.

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"251.2 Scope

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"b. a temporary lodging portion designed to offset the room cost of accommodations in a hotel, pension, or other transient-type quarters * * *. A house or apartment may not be designated as 'temporary lodging' unless the head of agency determines that it is occupied on a temporary basis. The costs of meals and tips of all kinds are excluded. The amount paid under the temporary lodging portion is either the employee's daily expenses for allowable items or the maximum prescribed rate * * * whichever is less * * *.

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"252.2 Temporary Lodging Portion

"252.21 Time Range Governing Period of Grant

"On or after his entrance on duty pursuant to transfer (Sec. 251.1b) and after completion of the period of his eligibility described in section 252.22 below, the temporary lodging portion of the home service transfer allowance, or a part thereof, may be granted to the employee. The grant, or grants, may cover periods during which the employee, or a member of his family, incurred expenses for temporary lodging at his post within a time range beginning 30 calendar days prior to the employee's entrance on duty and ending 30 calendar days after his entrance on duty; provided that the total number of days for which reimbursement is authorized does not exceed the period of the employee's eligibility as prescribed in section 252.22. Where the

employee is already at the post to which he is transferred, or has not yet entered on duty as the result of medical treatment, the effective date of transfer, rather than the date of entrance on duty, shall govern.

"252.22 Definite Periods Involved in Grant

"Within the time range outlined in section 252.21, the grant, or grants, of the temporary lodging portion may authorize reimbursement for any periods for which temporary lodging expenses were incurred by the employee or his family at his post up to a total of 30 calendar days provided that (1) during periods for which reimbursement is authorized the employee was in pay status, and (2) he was not authorized travel per diem * * *.

"252.23 Determination of Rates

"The rate at which the temporary lodging portion may be granted shall be the total of the employee's daily expenses for himself and his family (Sec. 040m) for temporary lodging (including room and bath, heat, light, fuel, and water); in addition there may be included the cost of service fees and taxes imposed by the management or local government upon the occupant during the period, or periods allowed by section 252.22 or the total of the maximum rates for such period or periods, computed from the table in section 942.2, whichever is less. The temporary lodging portion shall not be paid on behalf of any individual, employee or dependent for any period during which travel per diem is payable on behalf of that individual. Evidence of the daily cost of temporary lodging shall be a certified statement by the employee indicating the cost. The head of agency may require supporting receipts or other appropriate documentation."

The claimant is in agreement with that aspect of our Transportation and Claims settlement which held that the expenses incurred could not qualify for payment under the home service travel allowance. This conclusion results from the exclusion of meal costs contained in section 251.2(b), supra, and the lack of any applicable provision allowing for reimbursement of car rental costs. Naturally, since no amount specifically representing payment for housing accommodations was paid directly to the people with whom the claimant stayed, nothing remains for reimbursement.

Mr. Henderson suggests, however, that had he been placed in temporary duty status instead of being assigned to Washington during the period in question this would have qualified him for a per diem allowance, and he then "would have waived any further payment." Per diem in lieu of subsistence is payable when a traveler is away from his post of duty on official business. Since Mr. Henderson was officially assigned to Washington this became his post of duty during the period in question, and he may not be paid per diem at his headquarters. Further, it is the general rule that travel orders may not be revoked or modified retroactively so as to increase or decrease the rights which have accrued or become fixed under the laws and regulations unless error is apparent on the face of the orders, or all the facts and circumstances clearly demonstrate that some provision previously determined and definitely intended had been omitted through error or inadvertence in preparing the orders. 23 Comp. Gen. 713 (1944); 28 id. 732 (1949); 44 id. 405 (1965); 47 id. 127 (1967); 48 id. 119 (1968); 51 id. 736 (1972). The record before us does not clearly indicate such an error or inadvertence in not placing Mr. Henderson in a temporary duty status.

Upon reconsideration it is determined that the settlement of May 24, 1974, disallowing Mr. Henderson's claim must be sustained.

Paul G. Dembling

For Comptroller General
 of the United States