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DECISION

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

FILE: B-187120 DATE: JAN 4 1977

MATTER OF: Sanford O. Silver - Temporary lodging at family residence

DIGEST:

Employee who stayed at family residence while performing temporary duty may not be reimbursed lodging expenses based on average mortgage, utility, and maintenance expenses because such expenses are costs of acquisition of private property and are not incurred by reason of official travel or in addition to travel expenses.

This action is in response to a request dated August 3, 1976, from Ms. Orris C. Huet, an authorized certifying officer of the Department of Agriculture, for a decision concerning a voucher submitted by Mr. Sanford O. Silver for per diem in lieu of actual subsistence while on a temporary duty assignment.

The record indicates that Mr. Silver, a Forest Service employee, was transferred from Atlanta, Georgia, to Washington, D.C. on October 14, 1975. His family, however, remained in Atlanta until March 1976. From January 5, 1976, through January 11, 1976, Mr. Silver was assigned to temporary duty in Atlanta, Georgia. During this period, he lodged at his family's residence in Atlanta. While the voucher shows that Mr. Silver spent 7 days with his family in Atlanta he is claiming per diem in the amount of $104.50, based on estimated lodging costs of $18 per day for 5 1/2 days. The claimant calculated lodging expenses on the basis of the daily average of his monthly mortgage, utility, and maintenance costs. He arrived at a lodging cost of $18.36 a day, which was rounded to $18 per day.

The certifying officer states that although the regulations do not specifically prohibit the payment of per diem to an employee who temporarily obtains lodging at his family's residence, as long as it is not the residence from which he commutes daily to his official station, it is her opinion that the lodgings-plus system of computing per diem is inappropriate when an employee uses his residence for lodging. She believes that since a specific per diem rate as provided by Federal Travel Regulations (FPMR 101-7) paragraph 1-7.3c (May 1973), was not established in advance of the trip, Mr. Silver is not entitled to further reimbursement. We agree for the reasons set forth below.

This question was addressed at 35 Comp. Gen. 554 (1956), wherein we considered the entitlement to per diem of an employee who had been transferred from Washington, D.C., to Philadelphia, but whose family continued to reside in Washington. The employee rented a residence in Philadelphia from which he regularly commuted to his headquarters. While on temporary duty near Washington, D.C., the employee lodged with his family. We stated in that decision that the payment of per diem while on temporary duty was not legally objectionable because the employee stayed at a residence from which he did not regularly commute to his headquarters. Similar results were reached in our decision of B-127828, May 22, 1956; B-152216, August 20, 1963; B-165733, January 23, 1969; B-174722, January 20, 1972; B-174428, April 17, 1972.

Our decision in 35 Comp. Gen. 554, supra, and in those which followed it was based upon paragraph 6.2 of the Standardized Government Travel Regulations (March 1, 1965) which provided:

> "a. The per diem allowances provided in these regulations represent the maximum allowable. It is the responsibility of each department and agency to authorize 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 per diem rates in excess of those required to meet the necessary authorized subsistence expenses."

Under this regulation, which provided for "flat rate" per diem allowances, the employing agency was granted administrative discretion to determine whether and in what amount per diem would be authorized on behalf of an employee who lodged at his residence while on temporary duty. That paragraph has subsequently been superseded by regulations creating a "lodgings-plus" system of computing allowable per diem. As explained below, by reason of the institution of the lodgings-plus system our decisions in 35 Comp. Gen. 554 supra, and its progeny, should no longer be followed with respect to travel occurring after October 10, 1971 the effective date of the "lodgings-plus" amendments.

Section 5702 of title 5, United States Code, as amended by Public Law 94-22, May 19, 1975, provides that under regulations prescribed by the Administrator of General Services, employees traveling on official business inside the continental United States are entitled to a per diem allowance at a rate not to exceed $35. Implementing regulations appear in the Federal Travel Regulations (FPMR 101-7). FTR para. 1-7.3c(1), as amended effective May 19, 1975, provides that per diem shall be established on the amount the traveler pays for lodging, plus a $14 allowance for meals and miscellaneous expenses. FTR para. 1-7.3c(1)(a) requires that in computing per diem allowances there should be excluded from the computation the nights the employee spends at his residence or official duty station. More specifically, FTR para. 1-7.3c(2) (May 19, 1975) requires that the traveler actually incur expenses for lodging before allowing such an allowance, and provides as follows:

> "2. No minimum allowance is authorized for lodging since those allowances are based on actual lodging costs. Receipts for lodging costs may be required at the discretion of each agency: however, employees are required to certify on their vouchers that per diem claimed is based on the average cost for lodging while on official travel within the conterminous United States during the period covered by the voucher."

As stated by the Court of Claims in Bornhoft v. United States, 137 Ct. Cl. 134, 136 (1956):

> "A subsistence allowance is intended to reimburse a traveler for having to eat in hotels and restaurants, and for having to rent a room * * * while still maintaining * * * his own permanent place of abode. It is supposed to cover the extra expenses incident to traveling."

Under the rule set forth in Bornhoft, the only lodging expenses incurred by a traveler which may properly be reimbursed are those which are incurred by reason of the travel

and are in addition to the usual expenses of maintaining his residence. Here, the claimant maintained a second residence in Atlanta for family reasons. The costs of purchasing and maintaining the residence were incurred by reason of his desire to maintain a second residence, and not by virtue of his travel. The claimant obligated himself to pay these costs independently of and without reference to his travel. In short, his mortgage, and maintenance payments would have been made irrespective of the travel. As such, they are not properly for reimbursement.

Accordingly, Mr. Silver is not entitled to any cost of the lodging at his own residence. B-174983, March 31, 1972. The voucher is returned and may not be paid.

[redacted]
Comptroller General
of the United States