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DECISION



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

FILE: B-191401

DATE: December 27, 1978

MATTER OF: Richard E. Nunn - [Temporary Quarters
Subsistence Expenses]

- DIGEST:
1. Transferred employee, who was authorized temporary quarters subsistence expenses allowance, agreed to pay mother-in-law \$22.50 for room and board of three children. Agency determined that expenditure of \$12 per day for food was unreasonable since statistical data showed that reasonable expenditure would be \$7.74 per day. Agency determination is reversed since agency failed to consider fact that \$12 amount was reached by preparing a sample week's shopping list using actual market prices, that his mother-in-law prepared the three meals, and that employee negotiated rate with his mother-in-law in good faith.
 2. Transferred employee who was authorized temporary quarters subsistence expenses allowance, agreed to pay mother-in-law for room and board of his three daughters. Agency determination that \$10.50 per day for rooms was unreasonable is reversed as arbitrary. We find rate was reasonable since \$10.50 was considerably less than commercial rate, mother-in-law experienced inconvenience by staying with neighbor, except when she prepared meals, cleaned house and chaperoned children, children expended large amount of utilities, and employee negotiated rate in good faith.

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This action is in response to a letter from Mr. W. Smallets, Chief, Finance and Accounting, Central Security Service, National Security Agency (NSA), requesting a decision as to whether the NSA properly denied a portion of the claim of Mr. Richard E. Nunn for temporary quarters subsistence expenses (TQSE)

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allowance attributable to room and board expenses paid to his mother-in-law for his three daughters, and whether NSA is using proper methods in the settlement of similar claims. The request was forwarded to us by the Per Diem, Travel and Transportation Allowance Committee and has been assigned PDTATAC Control No. 78-9.

The record indicates that Mr. Nunn was transferred to Fort George G. Meade, Maryland, from Harrogate, England, effective August 3, 1977. Incident to this transfer TQSE was authorized by Travel Order No. MP 7 MH 124-77. The record further indicates that Mr. Nunn and his wife stayed at a Howard Johnson's Motor Lodge in Wheaton, Maryland, from August 2, 1977, to August 24, 1977, and that his three daughters stayed at their grandmother's house for the period August 2, 1977, through August 24, 1977. In consideration of his three daughters staying at his mother-in-law's house and receiving their meals there, Mr. Nunn agreed to pay his mother-in-law \$7.50 per day per child with \$4 attributable to food and \$3.50 attributable to lodging.

Mr. Nunn filed a claim with NSA for \$474, the amount that he paid his mother-in-law for room and board for his three daughters. The payment was based on the \$7.50 daily rate less certain meals that the children had with their parents. Thereafter NSA requested Mr. Nunn to provide documentation in support of the \$7.50 per day per child amount and, after receiving his response, allowed Mr. Nunn's claim to the extent of \$283.96 and denied the rest as in excess of that which was reasonable.

Mr. Nunn also filed a claim of \$1,237.19 for the expenses incurred by him and his wife which was allowed to the extent of \$1,192.72. That portion of Mr. Nunn's claim which was denied and which was attributable to expenses incurred by him and his wife does not appear to be in dispute and is therefore not addressed in this decision.

Mr. Nunn in a letter to NSA stated that the food amount of \$4 per day per child figure was subdivided into charges of \$1 for breakfast, \$1 for lunch, and \$2 for dinner, and was arrived at by preparing a typical week's shopping list using local market prices and an amount for the energy and labor costs associated with food preparation. He further stated:

"Generally speaking, the food and cost of its preparation averaged \$10.00 a day and \$2.00 was included for ancillary incidentals for the whole job. This divided by three people was arbitrarily factored into a 1+1+2 figure based on a reasonable estimate that the dinner value was quite a bit higher than breakfast or lunch. It may be that it should have been estimated at \$1.25, \$1.25 and \$1.50 respectively, but since it was a rare exception when the children ate out with us* * * and she agreed to a \$2 dinner decrement, I knew the cost advantage was in my (and the government's) favor."

In defense of the lodging cost of \$3.50 per day per child Mr. Nunn stated:

"Determining the factors used for room costs were a lot easier. My mother-in-law actually moved out of the house to reside with an elderly friend down the street, and only came home to cook the meals, clean, and chaperone if necessary. In actual fact the children took over her two-bedroom home for over 3/4 month. I agreed to pay for a prorated (3/4) share of a month's house payment, 1/12 taxes, and 3/4 of a month's worth of the gas, sewer, electricity, water and trash disposal services at amounts commonly averaged to the house for that time of the year* * *.

"The three-week board estimate including cleaning labor, approximated \$253. This was rounded off to \$231, which amounts to \$10.50 per day, and allotted in even 1/3 increments to each child at a cost of \$3.50 each."

Mr. Nunn in his letter to NSA additionally stated that the \$4 per day per child amount for food and the \$3.50 per day amount per child for lodging was the lowest his mother-in-law would agree to and that he negotiated the lowest price possible since it was apparent that they would be exceeding their daily maximum and that the excess would be at his own expense.

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Paragraph C 13000 of Volume 2, Joint Travel Regulations (2 JTR) (Change 133, November 1, 1976), authorizes, under proper circumstances, the payment of subsistence expenses of an employee and his dependents while occupying temporary quarters when the employee is transferred to a new permanent duty station. Also, reimbursement may be made only for actual subsistence expenses incurred not to exceed the maximum amount allowable, provided these are incident to occupancy of temporary quarters and are reasonable. 2 JTR para. C 13005 (Change 138, April 1, 1977).

It is the responsibility of the employing agency, in the first instance, to insure that such expenses are reasonable. Since this is primarily a question of fact, depending upon the particular circumstances of the case, this Office gives great weight to the agency's determination of what is reasonable, inasmuch as it is more familiar with the particular situation. While we have the right to review the circumstances of each case and make an independent determination as to the reasonableness of the subsistence expenses claimed, we will not substitute our judgment for that of the agency, in the absence of evidence indicating the agency's determination as to the reasonableness was clearly erroneous, arbitrary or capricious. Matter of Gordon S. Lind, B-182135, November 7, 1974.

In 52 Comp. Gen. 78, 82 (1972) we considered the reimbursement of amounts paid to relatives for food and lodging and stated in part:

"* * * we have allowed reimbursement for charges for temporary quarters and subsistence supplied by relatives where the charges have appeared reasonable; that is, where they have been considerably less than motel or restaurant charges. It does not seem reasonable or necessary to us for employees to agree to pay for lodging in motels or meals in restaurants or to base such payments to relatives upon maximum amounts which are reimbursable under the regulations. Of course, what is reasonable depends on the circumstances of each case. The number of individuals involved, whether the relative had to hire extra help to provide lodging and meals, the extra work performed by the relative and possibly other factors would be for consideration.* * *"

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The NSA in denying Mr. Nunn's claim determined that a food expenditure of \$12 per day for his three daughters was unreasonable and determined that a total cost of \$178 for 23 days or \$7.74 per day was reasonable. The NSA based this figure on Bureau of Labor statistics data which showed a typical family of three on a high-cost budget would spend \$8.10 per day. Also, NSA states that since settlement of Mr. Nunn's claim it obtained a Department of Agriculture booklet entitled "Your Money's Worth In Food" and the November 1977 statistical data sheet, "Cost of Food at Home Estimated for Food Plans at Four Cost Levels." The latter publication using a moderate cost plan reflects a food cost of \$7.35 per day for a family of three.

Although NSA based its determination that \$12 per day on food was unreasonable on statistical data showing that a reasonable expenditure would be much less, we believe that NSA erroneously failed to consider that Mr. Nunn arrived at the \$12 figure by preparing a sample shopping list using actual market prices, that his mother-in-law prepared the meals for his three daughters, and that Mr. Nunn negotiated this rate in good faith with his mother-in-law. Based on these facts, we believe that \$12 per day for food was a reasonable expenditure. Therefore, the agency determination on this item is reversed.

After considering Mr. Nunn's claim of \$10.50 per day for the lodging expenses of his three daughters NSA allowed Mr. Nunn's claim to the extent of \$73.26 for lodging and \$32.50 for utilities. Although Mr. Nunn's claim was based on a flat rate, NSA settled the claim on a separate room and utilities charge basis apparently due to Mr. Nunn's explanation of how the charge was arrived at. Without sufficient explanation NSA determined that a \$100 per month rate for the rooms or \$73.26 was reasonable and that a rate of \$32.50 for utilities was reasonable. The amount of \$32.50 for utilities was one-half of the amount that Mr. Nunn had used in arriving at a lodging rate of \$10.50 per day. The NSA apparently based its decision on the belief that the utility amount was an estimate because Mr. Nunn did not supply the actual receipts for the utilities used during the period in question.

The record in the instant case lacks a proper basis to support NSA's determination that the amount claimed for

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lodging was unreasonable under the circumstances. The NSA has given insufficient reasons why it considers \$10.50 per day unreasonable and why it considers \$3.33 per day for lodging (\$100.00 monthly rate) plus \$1.48 per day for utilities to be reasonable. Therefore, we have considered the various factors upon which the lodging cost was based. We agree that mortgage costs are fixed and do not change with the number of residents and, therefore, are usually not an accurate measure of the value of lodging. However, in this case we note that had Mr. Nunn's three daughters stayed in motel rooms, it would have probably cost an amount in excess of \$33 per day. Thus, the \$10.50 per day is a rate which is one-third of that which would have been expended had Mr. Nunn's three daughters stayed at the motel. In addition we believe that Mr. Nunn negotiated in good faith with his mother-in-law for a rate of \$10.50 per day since that rate was the lowest she would accept. Moreover, the fact that the three girls were staying at their grandmother's is just one factor to be considered. Lind, supra. Another factor to be considered is that Mr. Nunn's mother-in-law stayed with a neighbor during her granddaughters' occupancy of her house. Additionally it is apparent that any utility charges during the period in question are attributable to Mr. Nunn's daughters and not to his mother-in-law. We believe that the inconvenience experienced by Mr. Nunn's mother-in-law, the cost of utilities, the apparent good faith negotiation on Mr. Nunn's part, and the comparative low cost of the lodging justify a conclusion that the \$10.50 per day rate was reasonable in the absence of evidence to the contrary.

Accordingly, Mr. Nunn's reclaim voucher should be paid if otherwise correct.

R. F. Killeen

Acting Comptroller General
of the United States