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Mr. Roney

DECISION



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

FILE: B-193401 [Entitlement] DATE: May 5, 1981

MATTER OF: Joanne E. Johnson - [Subsistence Allowance] -
Temporary Duty Station

DIGEST:

1. New employee was assigned to temporary duty in Washington, D.C., area prior to reporting to first duty station overseas. Because employee commuted from permanent residence to training sites agency questions employee's entitlement to subsistence. Decisions of this Office and of the courts hold that employee is not entitled to per diem or subsistence allowance where he/she commutes to temporary duty station from permanent residence and incurs no additional expense.
2. Agency questions whether new appointees who are assigned to Washington, D.C., area for temporary duty prior to reporting to overseas duty station are entitled to subsistence allowance. Both new hires and transferees may be authorized subsistence at Washington, D.C., since, under the circumstances presented, it is a training or temporary duty site, not a permanent duty station, and the employee would undoubtedly incur additional expenses.

Thomas C. Roberts, Chief, Financial Policy and Accounting Division, Defense Intelligence Agency (DIA), requests our decision on the entitlement of Joanne E. Johnson, to per diem or actual expense allowance.

Mr. Roberts' request results from a prior decision of this Office Joanne E. Johnson, B-193401, May 17, 1979, which held that an employee was entitled to a transportation allowance between her residence in Annandale,

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Virginia, and a temporary duty station in Arlington, Virginia. Arlington was considered her temporary duty station since Ms. Johnson was assigned there only for processing and assignment of duties while waiting for a clearance prior to an overseas assignment.

On the basis of our determination that Arlington, Virginia, was Ms. Johnson's temporary duty station and not her permanent duty station, Mr. Roberts now asks whether DIA can issue confirmatory orders, effective November 16, 1977, assigning her to Stockholm, Sweden, with appropriate per diem or actual expenses for temporary duty in the Washington, D.C., area.

Mr. Roberts notes that Ms. Johnson's residence at the time of her appointment with the DIA was Annandale, Virginia, a suburb of Washington, D.C. He states that she commuted daily from that residence to the temporary duty locations in and around Washington. On that basis, Mr. Roberts feels that 9 Comp. Gen. 233 (1929) and 20 Comp. Gen. 820 (1941) prohibit payment of per diem in these circumstances. However, he notes that 2 JTR para. C4550-1a may be read as requiring per diem. That paragraph states:

"General. The per diem allowances prescribed in this part are applicable for all periods of temporary duty except when actual expense allowances authorized under Part M apply, and for all periods of permanent duty travel."

The above cited provision is not a mandatory provision but is a restatement of the general rule. Thus, the principle stated in 9 Comp. Gen. 233, and 20 Comp. Gen. 820, supra, is applicable in that an employee is not entitled to subsistence or per diem at a temporary duty site where no additional expense is incurred. 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 in another city while still maintaining his own table and his own permanent place of abode. It is supposed to cover the extra expenses incident to traveling."

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Since Ms. Johnson commuted to her temporary duty assignment from her permanent residence, it would not appear that she incurred any additional subsistence expenses by virtue of the temporary duty assignment. See Stanley N. Hirsch, B-187045, August 3, 1977. Therefore, in view of the Bornhoft decision, she would not be entitled to reimbursement for subsistence expenses.

Mr. Roberts also asks whether our answer to the preceding question would be different if the employee had been appointed for overseas employment from a place of residence outside the Washington, D.C., area. We assume that the other facts relating to training in and around the Washington, D.C., area prior to reporting overseas remain unchanged.

The essence of our answer to the preceding question was that the employee incurred no additional subsistence expenses since she maintained a residence in the Washington, D.C., area. Upon removal of that key fact, an employee would undoubtedly incur lodging and other expenses in addition to those necessary to maintain a permanent residence. Thus, both new hires and transferees may be authorized subsistence at Washington, under the circumstances presented, since it is a training or temporary duty site, not a permanent duty station. Cecil M. Holcomb, et al., 58 Comp. Gen. 744 (1979).

Milton J. Aorolan
Acting Comptroller General
of the United States