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

FILE: B-206546 **DATE:** April 3, 1984

MATTER OF: Constantine Bolaris - Per Diem Rate - Temporary Quarters Subsistence Expenses - Mileage

DIGEST:

1. Employee's claim for the higher per diem rate authorized on his travel orders is denied. Since the agency had established a lower rate, there is no authority for allowing reimbursement based on the higher rate.

2. Employee was authorized 30 days Temporary Quarters Subsistence Expense (TQSE), less a househunting trip of 6 days for him and his spouse. The claim of the employee's spouse for 6 days' househunting was paid and no claim for TQSE on her behalf was submitted. The agency deducted the 6 days' househunting paid on behalf of the employee's spouse from the employee's 30 days of TQSE and allowed him only 24 days of TQSE. Employee's claim for househunting was properly denied, since these are discretionary items and the agency interpretation of the regulations and travel orders is not unreasonable.

3. An employee who performs temporary duty travel during a period of TQSE may elect to receive a fractional per diem rate for fractional days of temporary duty travel and have the period of TQSE extended accordingly. 57 Comp. Gen. 700 (1978).

4. Where TQSE payments would not be duplicative of payments made for househunting trips, an employee may continue to receive TQSE while househunting since this could not be

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viewed as an unwarranted extension of temporary quarters.

5. Employee and spouse were authorized use of privately owned vehicles for relocation travel. In the absence of an explanation for the mileage claimed in excess of that shown on standard highway mileage guides, the claim for 31 miles by the employee, and 43 miles by his spouse should be disallowed.

6. Employee's claim for loss or damage to his personal property during the course of relocation are for resolution by the employing agency, and we have no jurisdiction. 31 U.S.C. § 3721(b) and (k).

This is an appeal from settlement Z-2336110, issued by our Claims Group on October 13, 1981, denying reimbursement on five categories of travel and relocation expenses claimed by Mr. Constantine Bolaris. We affirm the holding of our Claims Group on three issues, and modify the holdings on two other items. A discussion of the facts and the various issues involved follows.

RETROACTIVE CHANGE IN PER DIEM RATE

At all times relevant to this claim, Constantine Bolaris was an employee of the Department of the Interior, Office of Youth Programs. In March 1979, he was transferred from Philadelphia, Pennsylvania, to Kansas City, Missouri. His travel orders authorized a per diem rate of $35, which was the per diem rate authorized by the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR), at that time. However, upon submission of a voucher for reimbursement, a portion of his per diem claim was disallowed on the grounds that it was the policy of the Department of the Interior that only $30 per diem should be authorized for travel and relocation expenses associated with a permanent change of station.

In Arthur F. Colombo, B-205262, July 7, 1982, we considered a similar claim from an employee of the Department of Interior involving the same policy of allowing a reduced rate of $30 per diem for travel and relocation expenses associated with a permanent change of station. As we held in that case, since the agency has established a lower per diem rate, there is no authority for allowing reimbursement based on a higher rate. To the extent the travel order purports to establish a rate in excess of $30, that purported authorization is without effect. Accordingly, we sustain the action of the agency and of our Claims Group in denying this portion of the claim.

TEMPORARY QUARTERS SUBSISTENCE EXPENSES AND HOUSEHUNTING

The travel order of Mr. Bolaris authorized temporary quarters subsistence expenses (TQSE) for himself and his immediate family for a maximum of "30 days less househunting trip." Also authorized was a round trip between the old and new official duty station to seek permanent residence quarters, i.e., a househunting trip, for himself and his spouse for a maximum of 6 days.

Mr. Bolaris traveled to his new duty station on March 14, 1979, through March 16, 1979. He began his claim for TQSE at 8 a.m., March 16, 1979. Although the March 16th claim is only three quarters of a calendar day, it counts as the first day of TQSE and he is entitled to a maximum of 75 percent of $30 for that day, or a maximum of $22.50. Joseph B. Stepan, 56 Comp. Gen. 15 (1976); as amplified by 57 Comp. Gen. 6 (1977). The next 9 days, through to March 25, should also be reimbursed at a maximum rate of 75 percent of $30. FTR para. 2-5.4c(1).

Pursuant to FTR para. 2-5.4c(2), the second 10-day period of TQSE is to be compensated at a rate not to exceed two thirds of the per diem rate of $30, or $20.00. For Mr. Bolaris, the second 10-day period began on March 26, and ordinarily would have ended on April 4, 1979. However, his voucher indicates that he was on temporary duty from 8 a.m., on March 27, to 1:30 p.m., on March 30, 1979. Accordingly, assuming the maximum per diem rate authorized for his temporary duty was $35, he was entitled to a maximum of three-quarters of that amount for March 27 and March 30 (a maximum of $26.25 for each three-quarters of a day), and a maximum of $35 for March 28 and 29. From the record, it appears that the agency counted March 30 as a TQSE day. We point out that

Mr. Bolaris has the option of not claiming TQSE for that day and electing instead to receive an amount not to exceed the three-quarter per diem rate for his temporary duty. Gerald K. Schultz, 57 Comp. Gen. 700 (1978). The three-quarter day per diem rate for temporary duty travel should be reduced for calendar days on which lodgings away from his permanent station were not required. FTR para. 1-7.3b. He should be provided the opportunity to make such an election.

His voucher also indicates he was on temporary duty from 8:30 a.m., on April 4, through 2 p.m., on April 6, 1979. It appears that the agency counted both April 4 and April 6 as part of the TQSE claim. Here again, Mr. Bolaris has the option of claiming an amount not to exceed three-quarters of a day of per diem for temporary duty for those 2 days (a maximum of $26.25 or less when lodgings were not required), in lieu of a claim for TQSE ($20.00) on those days.

If Mr. Bolaris elects the fractional days of per diem for the temporary duty travel as discussed above, the second 10-day period would end on April 11, 1979.

The voucher submitted by Mr. Bolaris states that from 3:30 p.m., on April 11, through 10 p.m., on April 16 he and his spouse were househunting and he claimed reimbursement for that period.

The claim of Mr. Bolaris for househunting was disallowed since househunting travel of the employee must be accomplished before he reports for duty at the new station. No such restriction applies to the employee's spouse, and therefore, Mr. Bolaris was reimbursed for 6 days of househunting by Mrs. Bolaris. FTR para. 2-4.1a. We affirm these determinations.

Although the claim of Mr. Bolaris for househunting may not be allowed, he may continue his claim for TQSE for the period he was on the househunting trip since this cannot be viewed as constituting an unwarranted extension of TQSE. See Jon C. Wade, B-201518, October 28, 1981, 61 Comp. Gen. 46.

If Mr. Bolaris elects to claim the fractional days of per diem for temporary duty in lieu of TQSE, as discussed above, the third 10-day period of TQSE would end on

April 21, 1979, and he would have been entitled to reimbursement at a rate not to exceed one-half of the authorized per diem of $30, or $15.00 per day for that period. FTR para. 2-5.4c(3).

However, the agency interpreted the travel order of Mr. Bolaris to mean that he was only entitled to 24 days of TQSE. The orders authorized 30 days of TQSE less a maximum of 6 days' househunting. In the agency's view, even though the househunting expenses claimed by Mr. Bolaris could not be paid, as noted above, the claim of his wife for 6 days' househunting was paid. Therefore, Mr. Bolaris was entitled only to 24 days of TQSE.

In support of its position, the agency relies on the travel regulations of the Bureau of Reclamation, Department of the Interior, which at that time was providing administrative services (including processing of travel and relocation vouchers) to the Office of Youth Programs, the office which employed Mr. Bolaris. Specifically, Reclamation Instruction 359.12.4 provided that the maximum 30-day period "[s]hall be reduced by the number of days taken during an advance trip to search for permanent housing." The agency also points out that paragraph 2-5.1 of the FTR provides that, as a general policy, the period of TQSE should be reduced or avoided if a round trip to seek permanent residence quarters has been made.

Even assuming the Reclamation Instruction quoted above was properly applied to an employee of the Office of Youth Programs we do not believe either that regulation or the FTR poses an absolute bar to payment of the full 30 days of TQSE to Mr. Bolaris. Both regulations assume that payment of househunting expenses is otherwise proper and payable. The underlying rationale for both regulations is that neither employees nor their spouses should ordinarily be reimbursed for both househunting expenses and TQSE. Payment of the full 30 days of TQSE to Mr. Bolaris in the circumstances of this case would not violate that policy. Mr. Bolaris cannot be paid househunting, and no TQSE was claimed for Mrs. Bolaris or other members of the immediate family, even though TQSE for the family was authorized.

However, TQSE is a discretionary item and the agency's interpretation of the travel voucher, its own regulations, and the Federal Travel Regulations, is not unreasonable. Accordingly, Mr. Bolaris' claim for the additional 6 days is denied. Under the agency's interpretation, the period of TQSE would stop at the 24th day. If Mr. Bolaris elects to take the fractional days of per diem for temporary duty, as discussed above, the 24th day would be April 15, 1979.

MILEAGE

The third item disputed by Mr. Bolaris is the mileage claim for the travel of Mrs. Bolaris. Mr. Bolaris drove his car from Cherry Hill, New Jersey (8-15 miles from downtown Philadelphia) to the Kansas City Regional Office and claimed and was paid for mileage at $.10 per mile for 1,164 miles, based upon his speedometer readings. Mrs. Bolaris drove another car, and the voucher on her behalf claims 1,191 miles, or 27 miles more than Mr. Bolaris. The agency disallowed the 27 miles in the absence of an explanation for the discrepancy. On appeal, Mr. Bolaris states that the difference in mileage is due to the fact that Mrs. Bolaris traveled directly to their home in Overland Park, Kansas, which is 15 miles south of Kansas City. He offers no explanation for the remaining discrepancy of 12 miles.

The rule is that reimbursement for mileage should be based upon standard highway mileage guides and any substantial deviation should be explained. FTR para. 1-4b(1). The Rand McNally & Co. Standard Highway Mileage Guide shows the distance between Philadelphia and Kansas City, Missouri, as 1,118 miles. If an additional 15 miles is allowed for the distance between Philadelphia and Cherry Hill, New Jersey, Mr. Bolaris could be allowed payment for 1,133 miles. Accordingly, absent some explanation for the additional 31 miles he claimed, his payment should be reduced accordingly. Mrs. Bolaris should be allowed an additional 15 miles for travel to Overland Park, Kansas, for a total of 1,148 miles. Absent some explanation for the additional 16 miles for which payment has already been made, or the additional 43 miles claimed, payment for mileage on her behalf should be reduced accordingly. B-160203, October 31, 1966.

LOST AND DAMAGED GOODS

Mr. Bolaris also raises issues concerning loss or damage to his household goods during the course of his relocation. He also alleges certain improprieties which impact on his claim such as a failure by the agency to follow Federal Procurement Regulations and use the low cost carrier for the transportation of his household goods, and to withhold payment pending disposition of his loss and damage claim.

As advised by our claims settlement, claims for loss or damage to personal property are for resolution by the agency involved and the agency's determination is final and conclusive. 31 U.S.C. § 3721(b) and (k), as codified by Public Law 97-258, 96 Stat. 877, September 13, 1982. Accordingly, we have no jurisdiction with regard to this issue. However, as to the alleged improprieties, we point out that household goods generally move at reduced rates from that charged the general public, and are removed from the formal advertising requirements in the Federal Procurement Regulations. 49 U.S.C. § 1072 (Supp. IV 1980); 41 U.S.C. § 5 (1976). Further, transportation charges are required to be paid upon presentation, prior to audit, and are completely separate from loss and damage claims. 31 U.S.C. § 3726; Burlington Northern R.R. v. United States, 462 F.2d 526 (Ct. Cl. 1972).

EXPENSES INCIDENT TO RESIDENCE TRANSACTION

Two of the items claimed by Mr. Bolaris in connection with his real estate transactions were disallowed by the agency, and by our Claims Group, because the claims had not been properly documented. One item for $35, a "Settlement Room Charge" was disallowed because no receipt was submitted establishing that Mr. Bolaris had paid this amount. In the absence of such a receipt, payment should not be made.

The other item is for $90, and was listed on the voucher of Mr. Bolaris as an amount paid for certification required by the mortgagee-lender, FHA or VA, as to the structural soundness or physical condition of the new home he purchased. This amount was disallowed because there was nothing submitted by Mr. Bolaris showing what type of inspection or work was performed. An itemized receipt providing such information must be submitted so that the agency can determine what type of inspection was performed, if it was required as part of the transaction, if it is customarily paid by the buyer in that locality, limited to an amount customarily charged in that locality, and otherwise proper for payment under the FTR.

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Mr. Bolaris has been repeatedly advised that this amount may be reclaimed if an itemized receipt is submitted establishing what inspection or work was performed. We have no record that the necessary documentation has been submitted and, in the absence of proper documentation, the claim may not be paid.

CONCLUSION

The amount due Mr. Bolaris for his travel and relocation expenses should be recomputed by our Claims Group or by the agency as appropriate.

for Milton J. Socolar
Comptroller General
of the United States