

DECISION

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

U. USOM
RM-F
30165

FILE: B-216170**DATE:** January 8, 1985**MATTER OF:** Walter E. Myers - Actual Subsistence
Expenses - Contributions From
Private Sources**DIGEST:**

An employee who attended a meeting sponsored by a private organization in a high rate geographical area was provided a lunch and dinner without cost to the Government. Under 5 U.S.C. § 4111 and paragraph 4-2.1 of the Federal Travel Regulations, the employee's reimbursement for actual subsistence expenses which is limited to \$75 per day need not be reduced by the value of the provided meals.

Ms. Betty D. Gillham, an authorized certifying officer of the Bonneville Power Administration (BPA), Department of Energy, requests a decision concerning a claim for travel expenses filed by Mr. Walter E. Myers, a BPA employee. The issue is whether the actual subsistence expenses otherwise payable to Mr. Myers for his attendance at a meeting sponsored by a private organization must be reduced by the value of meals furnished without charge by the organization. Based on 5 U.S.C. § 4111, as implemented by para. 4-2.1 of Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), we hold that the authorized subsistence expenses are payable without a deduction for the provided meals.

BACKGROUND

Mr. Myers was authorized actual subsistence expenses at the daily maximum rate of \$75 in order to attend a meeting in Boston, Massachusetts, during the period September 10 to September 16, 1983. The meeting was sponsored by the Electric Power Research Institute (EPRI), a non-profit corporation established to coordinate the research and development activities of contributing electric utilities. The EPRI did not charge the Government a registration fee for the meeting, and it furnished the attendees a dinner on September 14 and a lunch on September 15 without charge. Mr. Myers filed a travel voucher showing that he incurred lodging expenses of \$68.64 on each of the 2 days in question

030957

]

and that, even with the dinner and the lunch provided by EPRI, he incurred meal expenses of \$7.25 on September 14 and \$28.56 on September 15. Since Mr. Myers' subsistence expenses of \$75.89 on September 14 and \$97.20 on September 15 exceeded his maximum entitlement, he limited his claim to \$75 for each day.

The BPA reduced Mr. Myers' daily subsistence allowance of \$75 by \$13.80 for September 14 and \$6.90 for September 15, determining that these deductions represented the reasonable value to him of the dinner and lunch provided by EPRI. In determining the value of the meals, the agency referred to its regulations prescribing a meal allowance of 46 percent of the maximum subsistence rate in high rate geographical areas (\$34.50 where the maximum rate is \$75), and authorizing 20 percent of that allowance (\$6.90) for lunch and 40 percent (\$13.80) for dinner.

In reducing Mr. Myers' subsistence allowance, the agency relied on our decision in Judy A. Whelan, B-207517, April 13, 1983. In that decision, we held that BPA properly reduced an employee's subsistence expenses by the reasonable value of lunches which were included in a registration fee paid by the Government and furnished to the employee as an integral part of a training course. We further decided that, in determining the reasonable value of lunches provided in a high cost area, BPA could apply its regulations prescribing a \$23 daily meal allowance for per diem areas and requiring a 20 percent reduction of this amount for a provided lunch. With respect to this latter aspect of our decision in Whelan, BPA notes that it computed Mr. Myers' claim under its regulations governing meal allowances in high rate geographical areas rather than those pertaining to per diem areas. However, the agency states that it recently began applying the per diem guidelines approved in Whelan to determine the appropriate deduction for meals furnished in high cost areas.

Mr. Myers reclaimed the amount of \$20.70 disallowed by BPA, maintaining that our decision in Whelan does not apply in this case since the Government was not charged a registration fee or otherwise required to pay for the meals furnished by EPRI. He further suggests that any deduction for the provided meals should be applied to his total subsistence expenses for each day and not to his daily maximum allowance, so as to permit reimbursement for lodging costs and other actual expenses not exceeding \$75 per day.

Against this background, BPA questions whether our decision in Whelan requires an agency to reduce an employee's subsistence allowance by the value of meals furnished by a private organization. The agency states that its application of our Whelan decision in this context has had an adverse effect on employee morale because the deduction for provided meals further reduces reimbursement amounts which, in some high cost areas, are insufficient to cover the full costs of official travel.

OPINION

At the outset, we note that our decision in Judy A. Whelan, cited above, concerned the Government's provision of meals to an employee as an integral part of a training course. In that situation, we held that the value of provided meals must be deducted from subsistence expenses payable under the training expense provisions of 5 U.S.C. § 4109(1982). Different statutes and regulations apply in this case, since the meals were furnished by a private organization without charge to the employee or the Government.

As a general rule, a private organization's payment of an employee's travel expenses either in cash or in kind represents an improper augmentation of the employing agency's appropriations as well as an unlawful supplementation of the employee's salary under 18 U.S.C. § 209 (1982). See 55 Comp. Gen. 1293 (1976), and cases cited therein. One statutory exception to this general rule is contained in 5 U.S.C. § 4111(a) (1982), which provides that an employee may directly accept a private contribution for training or travel and subsistence expenses for attendance at meetings if the contribution is made by a tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code [26 U.S.C. § 501(c)(3) (1982)]. If the employee is not authorized to accept contributions of travel expenses under section 4111(a), the agency may accept such a contribution on his behalf only if it has statutory authority to accept gifts or donations. See 46 Comp. Gen. 689 (1967); and 36 Comp. Gen. 268 (1956). Rules governing the acceptance of travel expenses under this latter criterion are outlined in 46 Comp. Gen. 689 (1967), and become relevant only if the provisions of 5 U.S.C. § 4111(a) do not apply to the contribution. See 49 Comp. Gen. 572 (1970).

In this case, the Internal Revenue Service has advised us that EPRI is a tax-exempt organization described in 26 U.S.C. § 501(c)(3). Accordingly, Mr. Myers was authorized under 5 U.S.C. § 4111(a) to accept the meals provided without charge by EPRI. His entitlement to be reimbursed for the balance of his travel and subsistence expenses is governed by 5 U.S.C. § 4111(b), which provides as follows:

"When a contribution, award, or payment, in cash or in kind, is made to an employee for travel, subsistence, or other expenses under subsection (a) of this section, an appropriate reduction, under regulations of the President, shall be made from payment by the Government to the employee for travel, subsistence, or other expenses incident to training in a non-Government facility or to attendance at a meeting."

Regulations implementing 5 U.S.C. § 4111(b), set forth in FTR para. 4-2.1, provide as follows:

"Agency responsibilities.

* * * * *

"b. Agency heads shall provide adequate safeguards to ensure that the following regulations are carried out:

* * * * *

"(2) If an approved payment by a donor does not fully cover expenses * * * [incident to training in a non-Government facility, or travel, subsistence, or other expenses incident to attendance at a meeting], the agency may pay an amount considered sufficient to cover the balance of the expenses to the extent authorized by law and regulation, including 5 U.S.C. § 4109 and 4110. If an amount in excess of such balance has previously been paid by the agency, such amount shall be recovered from the employee * * *."

The above-quoted statute and regulations accord agencies considerable discretion to determine the extent to which travel allowances must be offset by the amount of a private contribution. In this regard, we note that

section 4111(b) generally provides that an agency should make an "appropriate reduction" in travel expenses payable by the Government, and that the implementing regulations in FTR para. 4-2.1 allow agencies discretion to pay "an amount considered sufficient to cover the balance" of the employee's travel expenses. Neither the statute nor its implementing regulations expressly require an agency to reduce an employee's entitlement to other subsistence expenses actually incurred by the value of a private contribution.

The legislative history of 5 U.S.C. § 4111(b) shows that Congress enacted that section in order to preclude the Government from reimbursing travel expenses which have been covered by a private contribution. See H.R. Rep. No. 1951, 85th Cong., 2d Sess. 6 (1958). Consistent with this legislative intent, we have held that authorized per diem must be reduced by the value of subsistence items furnished in kind by a private organization. 49 Comp. Gen. 572, 576, cited previously. Since per diem is a commuted daily allowance payable without regard to actual expenses, payment of the full allowance would necessarily duplicate a private contribution covering a portion of the authorized subsistence expenses.

Actual and necessary subsistence expenses, however, are payable instead of per diem in designated high cost areas or where unusual circumstances make the per diem allowance inadequate. In contrast to per diem, actual subsistence expenses are payable only for those lodging and meal expenses which are actually incurred and itemized by the employee. In accordance with these rules, an employee who accepts a meal from a private source may not claim any reimbursement for the meal since he did not actually incur a meal expense.

Since the rules governing reimbursement of actual subsistence expenses effectively preclude any payment which would duplicate a private contribution covering meals, we find no basis in 5 U.S.C. § 4111(b) for requiring an agency to reduce an employee's actual expense entitlement by the value of provided meals. Under FTR para. 4-2.1, the agency may pay the employee an amount considered sufficient to cover his claimed expenses, limited to the daily maximum rate of \$75 stated in 5 U.S.C. § 5702 (1982) or the rate prescribed in FTR para. 1-8.6 for the particular high rate geographical area.

B-216170

On this basis, we hold that the BPA was not required to reduce the actual expenses payable to Mr. Myers by the value of the meals furnished by EPRI. Under FTR para. 4-2.1, the agency may pay Mr. Myers an amount considered sufficient to cover his actual expenses, not to exceed the authorized rate of \$75 per day.

We note that our holding in this case does not prevent an agency from limiting an employee's entitlement to subsistence expenses if it anticipates that some of those expenses will be covered by a private contribution. Although FTR para. 1-8.6 prescribes daily rates for high cost areas, FTR para. 1-8.1b(1) authorizes agencies to prescribe a per diem allowance for an individual in a high cost area if an appropriate official determines that any of the factors cited in FTR 1-7.3a would reduce the employee's travel expenses.

For the reasons stated above, we hold that BPA was not required to reduce the actual subsistence expenses payable to Mr. Myers by the value of meals furnished by EPRI. The agency may adjust his actual expense reimbursement in accordance with the standards prescribed above.

for 
Comptroller General
of the United States