

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**Niedinger
PKM-I
29479**FILE:** B-213777**DATE:**

October 2, 1984

MATTER OF: Richard E. Garofalo - Reimbursement
of Lodging Expenses**DIGEST:**

1. An employee returned to his old duty station to perform duties there, 3 days after he was transferred to a new permanent duty station. Since employee was at new station for 3 days and temporary duty travel authorization was not issued until after he arrived at new station for duty, he effected a permanent change-of-station transfer and duty thereafter performed at his old duty station is to be regarded as temporary duty for expense reimbursement purposes.
2. An employee, who performed temporary duty travel to old permanent duty station, asserts a claim for lodging expenses incident to that duty. The burden of proof is on the claimant to establish the liability of the United States and his right to receive payment. The employee here may not be reimbursed for the expenses claimed based on the present record since the documents submitted are inconsistent and do not convincingly support the claim. However, the Navy may allow payment if the claimant submits adequate additional documentation.

This decision is in response to a letter from Mr. Richard E. Garofalo. He is appealing a settlement by our Claims Group, dated June 23, 1983, which disallowed his claim for reimbursement of per diem and actual subsistence expenses incurred by him incident to duty which he performed in Newport, Rhode Island, during the period October 22, 1981, to January 22, 1982. The basis for the disallowance was a finding that he was not in a temporary duty status during the period in question, because Newport, Rhode Island, was found to be his permanent duty station.

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Based on the record in the case, we conclude that he was in a temporary duty status, and per diem and actual subsistence expenses were payable. However, for the reasons set forth below, the documentation of lodging expenses in the record before us is not sufficient to allow payment of the lodgings portion of the per diem and actual subsistence expenses for the period in question.

FACTS

Mr. Garofalo, who was an employee of the Naval Underwater Systems Center (NUSC), Newport, Rhode Island, sought a permanent change-of-station transfer in 1981. He was offered a transfer from NUSC, Newport, to NUSC, West Palm Beach, Florida, subject to a position downgrade from Supervisory Electronics Engineer, grade GS-13, to Electronics Engineer, grade GS-12. He accepted that transfer under those conditions. Due to an anticipated shortage of experienced personnel in the test and evaluation group from which he was transferring, he agreed to return to Newport from the West Palm Beach office for temporary duty following his transfer, if it was determined to be necessary.

By a Travel Authorization dated October 8, 1981, Mr. Garofalo was transferred to the West Palm Beach office of NUSC, and was authorized transportation of his dependents and household goods. On October 20, 1981, after he arrived at the West Palm Beach activity, he was issued travel orders assigning him to temporary duty for 90 days at his old duty station in Newport and elsewhere, effective October 22, 1981.

QUESTIONS PRESENTED

Since the basis for the appeal to this Office was a finding that Mr. Garofalo may not be reimbursed expenses incurred because he was not in a temporary duty status while in Newport, Rhode Island, we must resolve the following questions:

1. Was the claimant in a temporary duty status in Newport, Rhode Island, during the period in question?

2. Was the claimant entitled to be reimbursed for any per diem and actual subsistence expenses while in Newport?
3. If so, may he be reimbursed the cost of lodging in Newport during that period?

DECISION

The provisions of law governing entitlement of Federal employees to be reimbursed for expenses of official business travel are contained in 5 U.S.C. § 5702 (1982), and implementing regulations. Under the Code provision and paragraphs 1-7.6a and 1-8.1a of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), as well as paragraph C-4550-3 of Volume 2 of the Joint Travel Regulations (2 JTR), an employee may not be paid per diem or actual subsistence expenses while at his permanent duty station or at his place of abode from which he commutes daily to his duty station. His entitlement to be reimbursed such expenses is only for periods during which he is on official business away from his permanent duty station and away from his place of abode from which he commutes to his duty station.

Permanent Duty Versus Temporary Duty

We have held that the question of whether an assignment to a particular location should be considered a temporary duty assignment or a permanent duty assignment is a question of fact to be determined from the orders directing the assignment, the duration of the assignment and the nature of the duties to be performed under those orders. See Peter J. Dispenzirie, 62 Comp. Gen. 560 (1983); and Peck and Snow, B-198887, September 21, 1981. Further, the agency designation of an employee's permanent duty station as a particular location is not necessarily determinative. Frederick C. Welch, 62 Comp. Gen. 80 (1982).

Neither the law nor the FTR contains a definition of "permanent duty station," or "temporary duty station." However, such terms are defined in Appendix D of 2 JTR. The term "permanent duty station," is defined, in part, as being the building or other place where an employee regularly reports for duty, including, for certain purposes,

his residence at that location. The term "temporary duty station," is defined as being the place of duty to which an employee is assigned for a temporary period of time in connection with Government business and from which he will proceed or return to his permanent duty station. In conjunction with these definitions, FTR paragraph 2-1.4j provides that the effective date of a transfer from one duty station to another is the date on which the employee reports for duty at his new official station. A similar definition is contained in Appendix D, 2 JTR.

In the present case, Mr. Garofalo's entitlement depends, in the first instance, on whether he effected a permanent change of station from Newport to West Palm Beach. According to the file, Mr. Garofalo arrived in West Palm Beach on October 17, 1981. Apparently he reported in for duty on Monday, October 19, 1981, the date he was scheduled to so report and as we understand it, was placed on their rolls for time and attendance purposes. His temporary duty travel authorization, issued on October 20, 1981, contained a starting date of October 22, 1981, and was to run for 90 days. The itinerary for this travel was not merely to send him to his old duty station and return to West Palm Beach. His itinerary as listed in the travel authorization also included additional travel to Washington, D.C., Charleston, South Carolina, Norfolk, Virginia, and Andros Town, Bahamas, during that 90-day period.

Based on the foregoing, it is our view that Mr. Garofalo did effect a permanent change of station to West Palm Beach on October 19, 1981, and such travel as he performed to Newport, Rhode Island, and elsewhere, during the 90-day period beginning October 22, 1981, is to be considered temporary duty travel. Thus, Mr. Garofalo was entitled to be reimbursed for per diem or actual subsistence expenses while in Newport.

Lodging Expenses in Newport

Paragraph 1-8.5 of the FTR provides:

"Evidence of actual expenses. Actual and necessary subsistence expenses incurred on a travel assignment for which reimbursement is claimed by a traveler shall be itemized * * *. Receipts shall be required at least for lodging."

In connection with the above, we have stated that a traveler's claim for reimbursement must accurately reflect the facts involved in every instance to avoid any violation or apparent violation of the FTR. Kenneth G. Buss, 56 Comp. Gen. 104 (1976).

We are uncertain as to cost of the lodging, if any, asserted by Mr. Garofalo as having been incurred by him. Immediately prior to his permanent change-of-station transfer to West Palm Beach, Mr. Garofalo had been residing at 21 Coddington Wharf in Newport for 10-12 months. During that time, such renting arrangements as he had with the owner were on an informal direct payment basis. He claims that at the time he returned to Newport on October 22, 1981, he again resided at 21 Coddington Wharf and made arrangements through a realty company to accept his rent on behalf of the owner of that property, because personnel in the NUSC travel office informed him that informal rental agreements such as he had previously would not serve as a basis for lodging cost reimbursement purposes.

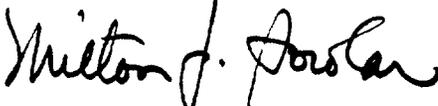
We concur, generally, with the advice apparently given Mr. Garofalo by the NUSC travel office. However, we are unaware of any requirement that a third party need be used for this purpose. The purpose of formalizing a rental agreement is to provide definitive evidence of the incurrence of the expense. It is our view that a lease agreement executed by an employee performing temporary duty and a property owner containing the rental terms would normally be adequate. The submission of such a document along with copies of all checks in payment would probably be considered acceptable evidence of lodging expenses.

In support of his lodging expense claim of \$1,200, Mr. Garofalo has supplied a copy of a lease agreement dated October 22, 1981, between him and a representative of a realty company. He has also supplied copies of receipts from the realty company to support his rental payments, but which only total \$1,140, and copies of several checks issued by him to the realty company which only total \$920, and include a \$400 rental security deposit check that was in the end applied to a final rent payment. In addition to

differing in amount, the checks and receipts contain divergent dates. Moreover, the record provides no direct evidence that the lease agreement was executed on behalf of the owner. In summary, the documentation submitted by Mr. Garofalo in support of his claim for lodging expenses is inconsistent and not sufficient to support payment of that portion of his claim.

In this case, as in every case where an entitlement to payment from the United States is asserted, the burden of proof is on the claimant to establish the liability of the United States and his right to payment. 4 C.F.R. § 31.7 (1984). See also, Raymond Eluhow, B-198438, March 2, 1983. Taken as a whole, the evidence of record does not completely demonstrate that payments for Mr. Garofalo's lodging were made to an authorized representative of the owner, or the amount thereof.

Accordingly, the claim for the lodgings portion of per diem and actual subsistence expenses, as presented, is too doubtful to warrant payment. See 49 Comp. Gen. 656, 662 (1970), citing to Longwill v. United States, 17 Ct. Cl. 288 (1882); and Charles v. United States, 19 Ct. Cl. 316 (1884). However, the Navy may allow this portion of the claim if Mr. Garofalo is able to establish the amount of the rental payments and that the payments were made to an authorized representative of the owner. As indicated previously, we find that he is entitled to payment of the other portions of the claim for per diem and actual subsistence expenses.

for 
Comptroller General
of the United States