



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: David A. Seel - Claim for Reduced
Per Diem Allowance

File: B-224074

Date: June 1, 1987

DIGEST

An FBI employee whose permanent duty station is in Philadelphia, Pennsylvania, was assigned temporary duty at the FBI Academy, Quantico, Virginia, to work on a highly sensitive investigation. While there, he was provided certain services such as lodging, meals and laundry privileges at Government cost. Since it is the responsibility of the Government agency involved to determine, in the first instance, the amount of reduced per diem allowance, if any, due the employee under these circumstances, we remand this claim to the agency for that determination.

DECISION

This decision is in response to a request from Mr. William E. Burrows, Jr., Authorized Certifying Officer, Federal Bureau of Investigation (FBI), United States Department of Justice (DOJ), as to whether Mr. David A. Seel, an FBI employee, may be paid a reduced per diem allowance for a period of temporary duty during an FBI Special Assignment at the FBI Academy, Quantico, Virginia. For the following reasons, we remand this claim to the FBI to determine the amount of reduced per diem allowance, if any, that may be paid to Mr. Seel.

BACKGROUND

The record shows that Mr. Seel, an FBI employee whose permanent duty station was in Philadelphia, Pennsylvania, was assigned to temporary duty at the FBI Academy, Quantico, Virginia, along with several other employees. The reason why the temporary duty was being conducted at this site was to maintain the integrity of a highly sensitive criminal investigation. Although it was originally anticipated that this special assignment would take approximately 30 days,

039072

it lasted 75 days, during the period of October 1984 through January 1985, in Mr. Seel's case. While staying at the FBI Academy, Mr. Seel was provided such services as lodging, meals, and laundry privileges at Government expense.

On his voucher dated December 5, 1985, Mr. Seel claimed a reduced per diem allowance of \$431.25 (75 days at \$5.75 per day). The FBI denied Mr. Seel's claim on the basis of paragraph 1-7.3e(4) of the agency's travel regulations, DOJ Travel Regulations Order No. 2200.11 (May 15, 1984). Mr. Seel contends that this paragraph is not applicable to his claim and that he is entitled to a reduced per diem allowance under Federal Travel Regulations (FTR), para. 1-7.3d (Supp. 5, May 20, 1983) and 1-7.6f (Supp. 1, September 28, 1981), incorp. by ref., 41 C.F.R. 101-7.003 (1985), which were applicable at the time of the events in this case.

OPINION

Paragraph 1-7.3e(4) of DOJ Travel Regulations Order No. 2200.11 (May 15, 1984) provides that:

"(4) Per diem allowance for attendees at 'live-in' programs. For any 'live-in' program in which lodging and meals are paid for through program tuition, a per diem allowance of \$4.00 shall be authorized to cover miscellaneous subsistence expenses of the attendee. However, no per diem shall be authorized for employees attending programs conducted at the FBI Academy located in Quantico, Va."

By the terms of this regulation, no per diem is authorized for employees attending any "'live-in' program in which lodging and meals are paid for through program tuition" conducted at the FBI Academy. However, Mr. Seel was not attending such a program; he was on temporary duty for a special assignment which happened to be headquartered at the FBI Academy for security reasons. Thus, paragraph 1-7.3e(4) of DOJ Travel Regulations Order No. 2200.11 is clearly not applicable to the circumstances of Mr. Seel's case.

The appropriate provision of the FTR which was in effect at the time of the events in this case was FTR para. 1-7.6f (Supp. 1, September 28, 1981), which provides:

"f. Deductions for meals and/or lodging furnished. Where meals and/or lodging are furnished without charge or at a nominal cost by a Federal Government agency or at a temporary duty station, an appropriate deduction shall be made from the authorized per diem rate."

Under this provision of the FTR, Mr. Seel, who was on temporary duty at the FBI Academy where certain services were provided, may be entitled to a reduced per diem allowance. However, under this provision of the FTR, the agency involved has the responsibility for determining, in the first instance, the amount of the reduced per diem allowance, if any, which the employee on temporary duty may be paid. See Jack C. Smith, et al., 63 Comp. Gen. 594 (1984).

Our decisions have held that per diem need not be paid where an employee on temporary duty incurs no additional living expenses or where lodgings and meals are provided. Smith, cited above; Barbara J. Prottis, B-195658, March 19, 1980; and B-180111, March 20, 1974. Where the employee incurs little or no additional costs by reason of the temporary duty assignment, we have held it is the responsibility of the agency to authorize only such per diem allowances as are justified by the circumstances. See Smith, cited above, and decisions cited.

In this case, the FBI has not yet made such a determination, and thus, we remand this claim to the agency so that the appropriate FBI official may make that determination. We note that Mr. Seel contends that the appropriate per diem rate should be \$5.75 on the basis of a regulation in the Internal Revenue Service (IRS) Travel Handbook concerning similar circumstances at the Federal Law Enforcement Training Center in Glynco, Georgia. That IRS regulation would not be controlling here, and the decision in this case is within the discretion of the appropriate FBI official.

Finally, the FBI may wish to consider promulgating a travel regulation concerning the amount it will allow other employees in Mr. Seel's circumstances in the future.

Milton J. Dowler

for

Comptroller General
of the United States