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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John T. Bailey III - Relocation Travel with
Temporary Duty En route

File: B-230472

Date: March 16, 1989

DIGEST

1. A transferred employee who performed temporary duty travel en route to his new duty station rented an apartment from a fellow employee who owned and rented apartments as a business sideline. The agency limited the employee's per diem to the subsistence portion (50 percent), since under agency regulations such lodgings must be considered noncommercial. On appeal, we hold that the lodging cost may be allowed since the fact that the owner of commercial lodgings is a friend, acquaintance, or a fellow employee does not automatically make those accommodations noncommercial. See also Peter Lalic, B-227430, dated today.

2. The immediate family of a transferring employee accompanied him while he performed temporary duty en route to his new duty station. The agency computed their cost of travel and per diem on a constructive basis using the most direct route airline schedule. On appeal, the agency action is sustained. The Federal Travel Regulations permit indirect travel, but specifically provide that reimbursement for travel is limited to the cost of the most direct usually traveled route between old and new stations with per diem based on that routing.

DECISION

This decision is in response to a request from the Director, Alaskan Region, Federal Aviation Administration (FAA), concerning the entitlement of Mr. John T. Bailey III, an FAA employee, to be reimbursed additional travel expenses incident to a permanent change of station and en route temporary duty travel. We conclude that he may be reimbursed certain additional amounts for the following reasons.

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BACKGROUND

Mr. Bailey was transferred from Nome, Alaska, to Bethel, Alaska, with a reporting date of June 1, 1987. He was authorized travel and transportation for his family to the new duty station incident to that transfer. In addition, his travel orders specified that he would be performing "job performance travel en route" to his new duty station until May 29, 1987.

The temporary duty which Mr. Bailey was to perform en route was in Fairbanks, Alaska, and we have been informed that the appropriate routing for his travel would be Nome to Anchorage, to Fairbanks, return to Anchorage and then on to Bethel. The appropriate routing for his dependents' travel would be directly from Nome to Bethel.

Mr. Bailey, as a matter of personal preference, chose to have his family accompany him to his temporary duty location in Fairbanks before proceeding to his new permanent station in Bethel. Upon arrival in Fairbanks, Mr. Bailey rented an apartment from another FAA employee for the period May 23-31, 1987, at a cost of \$125. We understand that this cost was significantly less than it would have been had he lodged elsewhere in Fairbanks during the same period. However, Mr. Bailey's per diem was limited to 50 percent of the locality per diem rate for Fairbanks (\$105). This reduced rate represented reimbursement for only the subsistence portion of the per diem. The lodging portion was disallowed because he had obtained lodging from another FAA employee, which under agency regulations is considered noncommercial lodging permitting the payment of only 50 percent of the per diem rate. Mr. Bailey challenged that action, and the agency asks whether he may be paid the full per diem for Fairbanks or the actual cost of lodging.

Mr. Bailey also questions the limited agency reimbursement of transportation for his travel and the travel for his family. The agency reports that it had arranged for him to obtain separate air transportation for his family to Bethel and for himself to Fairbanks en route to Bethel through use of a Government Transportation Request (GTR). Mr. Bailey chose instead to use the GTR to obtain airline tickets for himself and his family on Alaska Airlines so that they could accompany him to Fairbanks. As a result, the agency adjusted the reimbursable cost on a constructive basis by utilizing airline schedules for both his family's direct relocation travel and his separate indirect travel.

RULING

The provisions of the Federal Travel Regulations (FTR) governing per diem for official travel during the period in question are contained in chapter 1, part 7 of the FTR (Supp. 20, May 30, 1986), incorp. by ref., 41 C.F.R. § 101-7.003 (1987). Paragraph 1-7.5 of the FTR provides in part:

"(c) Lodging with friends or relatives. When the employee obtains lodging from friends or relatives (including members of the immediate family) with or without charge, no part of the per diem allowance will be allowed for lodging unless the host actually incurred costs in accommodating the traveler. . . . Neither costs based on room rates for comparable commercial lodgings in the area nor flat 'token' amounts will be considered as reasonable."

The regulation prohibits reimbursing an employee who stays in noncommercial lodging, i.e., a friend's or relative's home, unless the employee can show that the host incurred additional cost and he reimbursed the host that expense. See Robert J. Gofus, B-223805, Mar. 20, 1987, 66 Comp. Gen. 347, and decisions cited. However, commercial type accommodations do not automatically turn into noncommercial accommodations under the regulations merely because the employee traveler knows the lodging operator, or the operator is a friend or even a relative. Richard E. Garofalo, B-213777, Aug. 8, 1986. See also John M. Baer, B-185975, Oct. 28, 1976.

As we understand the situation, the lodging was obtained from another FAA employee who, as a business sideline, owns and rents several apartments in the Fairbanks, Alaska, area, and happened to have a vacant apartment at the time Mr. Bailey was performing temporary duty there. Even though the rental cost for the period may have been less than the cost of motel accommodations elsewhere in the area, there is nothing in the record to suggest that Mr. Bailey's occupancy of the apartment was anything other than a business arrangement. Garofalo, B-213777, supra. In view thereof,

the cost of Mr. Bailey's lodging in Fairbanks during his temporary duty period may be reimbursed.^{1/}

As to the second question regarding constructive travel, we note that reimbursement for the relocation travel of dependents, including their travel per diem, is a statutory right separate and distinct from the statutory right governing reimbursement for travel performed by the employee. 5 U.S.C. § 5724a and 5 U.S.C. § 5724 (1982), respectively. In this regard, paragraph 2-2.2 of the FTR governs relocation travel entitlements for an employee's immediate family, and paragraph 2-2.2a permits their travel to begin at the employee's old duty station or some other point and to end at the new duty station or some other point selected by the employee with the following limitation:

"However, the cost to the Government for transportation of the immediate family shall not exceed the allowable cost by the usually traveled route between the employee's old and new official stations."

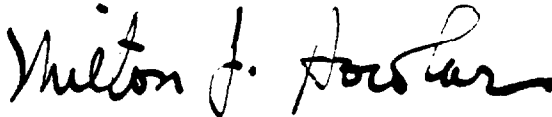
Additionally, subparagraph 2-2.2b imposes the same constructive limitation on the computation of the family's per diem entitlement. See also FTR, para. 1-2.5b.

Mr. Bailey's orders stated that his family was authorized to travel one-way from Nome to Bethel by air and at the "lowest cost available." Since the record indicates that Nome and Bethel are connected by direct airline flights, Mr. Bailey's reimbursement for his family's travel is to be based on such a flight and travel per diem as is appropriate for such travel. Gary E. Pike, B-209727, July 12, 1983; Katharine B. Gebbie, B-227382, Apr. 8, 1988; John P. Butt, 65 Comp. Gen. 47 (1985).

With regard to Mr. Bailey's travel, the routing for that would be from Nome to Anchorage, to Fairbanks, return to Anchorage and then to Bethel, his new permanent duty station. Since Mr. Bailey's mode of transportation was also

^{1/} See also Peter Lalic, B-227430, dated today, in which we overrule 7 Comp. Gen. 348 (1927), a prior decision which prevented rental agreements between federal employees. In Lalic we conclude that an employee's rental of property to another federal employee is an independent matter unrelated to an employee's official duties.

designated as being the lowest cost available air travel,
that is the basis upon which his travel cost reimbursement
should be predicated.

for 
Comptroller General
of the United States