



DIGEST - 1-08

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

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JAN 2 - 1970

Mr. Ingram J. Grosberg
Chief, Fiscal Management Branch
Internal Revenue Service
U. S. Treasury Department
90 Church Street
New York, New York 10007

Dear Mr. Grosberg:

Your letter of October 31, 1969, reference Ad:FF, requests our decision whether Mr. Donald T. Hartley, an employee of the Internal Revenue Service, may properly be reimbursed the sum of \$31.75, representing actual subsistence expenses, under the following reported facts and circumstances:

"Mr. Donald T. Hartley, District Director of the Albany Internal Revenue Service District Office was authorized to attend the Joint Conference of Field and National Office Officials at Washington, D.C. from September 15 to September 18, 1969 on an actual subsistence expense basis not to exceed \$30.00 per day.

"While at this conference, Mr. Hartley was notified on the morning of September 16, 1969 that his father suffered a severe heart attack and was hospitalized in Clearwater, Florida. Consequently, Mr. Hartley requested emergency annual leave which was approved by the Regional Commissioner.

"Since Mr. Hartley was on emergency annual leave from 5:25 P.M. on September 16, to 5:00 P.M. on September 17, 1969, this office suspended \$31.75 consisting of one night's lodging of \$20.25 and dinner on September 17, 1969 for \$11.50. This suspension was made in accordance with Subsection 6.3 of the Standardized Government Travel Regulations, Revised March 1, 1965 which states in part:

"Fractional leave of absence wholly within a day, where for half of the prescribed working hours or less, will be disregarded for subsistence purposes; where it exceeds half of the prescribed working hours no subsistence will be allowed for the day."

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In addition to the above you state that Mr. Hartley did not have time to check out of his hotel room on September 16 since he attended the afternoon session of the Joint Conference from 2 to 4 p.m. and his flight to Florida departed Washington at 5:25 p.m. Also, you point out that on September 17, the day of his annual leave, Mr. Hartley returned to Washington in time to attend a scheduled buffet from 6 to 8 p.m.

Since Mr. Hartley's annual leave was not planned in advance, but resulted from an emergency, you question whether suspension of the amount in question under section 6.3 of the travel regulations, quoted above, was necessary and proper.

Initially we point out that since the employee was on annual leave for the entire workday, September 17, the above-quoted regulation which pertains to fractional leaves of absence is not applicable. Rather, the governing regulation in the circumstances here involved is subsection 6.12d(1) of the Standardized Government Travel Regulations which provides as follows:

"(1) Except as stated below, if the time that leave of absence begins or terminates is within the traveler's prescribed hours of duty, subsistence allowance will terminate or begin at such time. If leave of absence does not begin or terminate within the traveler's prescribed hours of duty, the traveler will be regarded as being in subsistence status until midnight of the last day preceding the leave of absence and from 12:01 a.m. of the day following the leave of absence: Provided, that if after such leave of absence the traveler returns to a duty status at the same or different temporary duty station, lodging will be allowed only for the night preceding his first day's leave of absence or the night preceding his return to duty status." (Emphasis added.)

Mr. Hartley's leave of absence did not begin or terminate within his prescribed hours of duty. Therefore, under the above regulation the employee is regarded as having been in a subsistence status until midnight of September 16 and from 12:01 a.m. of September 18. Accordingly, it was proper to suspend the amount (\$11.50) expended for dinner on September 17 and, in accordance with the language underscored above, the amount (\$20.25) representing one night's lodging.

The fact that the employee's request for annual leave was necessitated by a family emergency may not serve to enlarge his rights in the

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matter. The above-quoted regulation, having been issued pursuant to 5 U.S.C. 5707, has the force and effect of law, and our Office may not, by decision, create exceptions thereto. See B-165762, January 21, 1969, copy enclosed.

The enclosures to your letter are returned.

Sincerely yours,

R. F. Keller

Assistant Comptroller General
of the United States

Enclosures

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