



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20543

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B-178673

July 12, 1973

Mr. L. H. Cave
Disbursing Officer
Mobile District, Corps of Engineers
Department of the Army
P.O. Box 2288
Mobile, Alabama 36628

Dear Mr. Cave:

This is in reference to your letter of March 16, 1973, reference SAMCK, requesting an advance decision concerning the propriety of Mr. Jacob D. Elliott's claim for reimbursement of actual expenses he incurred while on temporary duty with the Susquehanna District in support of disaster recovery operations in areas damaged by Hurricane Agnes during the summer of 1972 (Operation Noah II). Your letter was assigned PDTATAC Control No. 73-27 by the Per Diem, Travel and Transportation Allowance Committee and forwarded here on May 14, 1973.

Headquarters, Mobile District, Corps of Engineers, issued Travel Orders No. 135 CE on July 14, 1972, authorizing Mr. Elliott to travel to Harrisburg, Pennsylvania, for approximately 30 days temporary duty. These orders authorized per diem in accordance with Department of Defense Civilian Personnel Joint Travel Regulations (JTR). Mr. Elliott performed the travel and temporary duty authorized in the travel orders and returned to his official station on August 18, 1972. He submitted a travel voucher on an actual expense basis in the amount of \$2,103.91. The amount of \$855.35 was allowed consisting of per diem for 33 days at \$25, plus other reimbursable expenses of \$30.35. He accepted this reduced amount under protest and requested that his claim for the remaining \$248.56 be forwarded to this Office for a decision.

Mr. Elliott contends the \$855.35 allowed does not cover the expenses he incurred while staying in the disaster ravaged area where scarcity of accommodations had inflated prices to unrealistic levels. As to cost of accommodations, the record shows that the motel room was \$15 per day plus 90 cents tax. Moreover, he claims he was informed by superiors that the trip would be on an actual expense basis and authority for this would be obtained after-the-fact, upon completion of the temporary duty. Mr. Elliott maintains he justifiably relied on the aforementioned representations and he should now be reimbursed the added expenses caused thereby.

PUBLISHED DECISION
By Compt. Gen. _____

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Actual travel and subsistence expenses are governed by 5 U.S.C. 5702 which provides in pertinent part:

§ 5702. Per diem; employees traveling on official business

(a) An employee, while traveling on official business away from his designated post of duty, is entitled to a per diem allowance prescribed by the agency concerned. For travel inside the continental United States, the per diem allowance may not exceed the rate of \$25.

* * * * *

(c) Under regulations prescribed under section 5707 of this title, the head of the agency concerned may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of the trip, not to exceed an amount named in the travel authorization, when the maximum per diem allowance would be much less than these expenses due to the unusual circumstances of the travel assignment. The amount named in the travel authorization may not exceed—

(1) \$40 for each day in a travel status inside the continental United States; or

(2) the maximum per diem allowance plus \$18 for each day in a travel status outside the continental United States.

This statute in regard to actual subsistence expenses has been implemented by section 7, Standardized Government Travel Regulations (SGTR), Circular No. A-7, as revised, which provides:

7.1 Authorization or approval. a. Must relate to specific travel assignment. Authorization or approval will be limited to specific travel assignments where due to the unusual circumstances of the assignment the maximum per diem allowance would be much less than the amount required to meet the necessary subsistence expenses of a traveler.

b. Duty of heads of agencies and departments.

Heads of agencies, as defined in 5 U.S.C. 5701, will, in accordance with the provisions of this section, prescribe conditions under which reimbursement may be authorized or approved for the actual and necessary subsistence expenses of a traveler. Such conditions shall restrict travel on an actual subsistence expense basis to those travel assignments where necessary subsistence costs are unusually high. They should not permit the use of the actual subsistence expense basis where necessary subsistence expenses may exceed the statutory maximum per diem allowance by a small amount. Because hotel accommodations constitute the major part of necessary subsistence expenses, travel on an actual subsistence expense basis might appropriately be authorized or approved for travel assignments which otherwise meet conditions prescribed by the head of the agency where the traveler has no alternative but to incur hotel costs which would absorb all or practically all of the statutory maximum per diem allowance.

c. Delegation of authority. Heads of agencies may delegate, with provision for limited redelegation, authority to authorize or approve travel on an actual subsistence expense basis. Such delegation or redelegation should be held to as high an administrative level as practicable in order to insure adequate consideration and review of the circumstances surrounding the need for travel on the actual subsistence expense basis.

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e. Conditions warranting approval. If travel is performed (a) without prior authorization or is authorized on a per diem basis, and (b) otherwise conforms to this section, the necessary subsistence expenses incurred may be approved, within the statutory maximum allowable.

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7.3 Agency reviews and administrative control. Heads of agencies will establish necessary administrative arrangements for an appropriate review of (a) the justification for travel on the actual expense basis, and (b) the subsistence expenses claimed by a traveler in order to determine that they are proper subsistence expenses and were necessarily incurred in connection with the specific travel assignment. Agencies are cautioned to see that travel on an actual subsistence expense basis is administered in accordance with the spirit and intent of the law and to take such steps as are necessary to prevent abuses.

This statutory regulation has been further implemented within the Department of Defense by the Joint Travel Regulations, Volume 2, which provide in pertinent part:

C8151 REQUESTS FOR ACTUAL EXPENSE ALLOWANCES

When situations arise which appear to warrant the authorization of actual expenses for a specific travel assignment, letter or wire request furnishing details of the conditions warranting the actual expense allowance will be submitted in accordance with this paragraph with a recommendation as to the amount to which the reimbursement should be limited. When such conditions are not known in advance, similar action may be taken and approval may be granted after the travel is performed. Every effort will be made to insure uniformity of allowances between members of the Uniformed Services and civilian employees, when traveling together or to the same place, when warranted by similarity of the incidents of travel and temporary duty. Request for such allowances will be accompanied by a full statement of the facts in the case, the Department of Defense components (par. C1100) involved, the number of employees involved, and the reasons why it is believed that normal per diem allowances will not suffice. Requests shall be submitted in accordance with par. C8155.

C8152 WHO MAY AUTHORIZE OR APPROVE

1. GENERAL. Except for the officials referred to in subpar. 2, [not here pertinent], actual expense allowances, when appropriate, will be authorized or approved by an Actual Expense Authorization issued by the Per Diem, Travel and Transportation Allowance Committee. Actual Expense Authorizations may be issued by the Advisory Panel over the signature of the Executive.

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C8154 CRITERIA FOR AUTHORIZING OR APPROVING ACTUAL EXPENSE ALLOWANCES

Actual expense allowances are intended for use in unusual cases where it is anticipated that the traveler will incur actual and necessary expenses in amounts which will not be covered by the normal per diem allowances prescribed in Part C or Appendix C, Part I, whichever are applicable. Unusual cases include but are not limited to instance where:

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5. extenuating circumstances other than those in items 1 through 4 are such that the authority directing the travel determines the nature of the temporary duty is unusual and the use of hotels and restaurants at prices well in excess of normal per diem allowances is necessary and in the interest of the Government.

Items 1 to 4 mentioned above are not pertinent to duty such as here involved.

In accordance with these regulations the Office of the Chief of Engineers (OCE), Headquarters, Department of the Army, submitted memoranda in November 1972 requesting approval for actual expense allowances for approximately 542 civilian employees and 30 military personnel who performed temporary duty at various locations incident to Hurricane Agnes

relief operations. The Per Diem, Travel and Transportation Allowance Committee disapproved the OCE request on the rationale quoted below:

2. In order to be entitled to consideration for actual expense allowances, the maximum per diem allowance must be much less than the amount required to meet the actual and necessary expenses of the trip due to the unusual nature of a travel assignment (5 U.S.C. A. 5702(c) and 37 U.S.C. 404(d)). A close examination of the data submitted with references (a) and (b) fails to show that other than the normal charges ordinarily encountered in those areas for the accommodations used.

3. The Comptroller General of the United States has held that the actual expense authority contained in the statutes listed above may not be used to overcome a general deficiency in the statutory per diem allowance. It is well known that the normal per diem allowance fails to cover normal costs in many places in the United States among which are many of the cities to which the travelers listed in references (a) and (b) traveled. * * *

It has long been held that the determination of an agency, acting within the field of its designated powers and authority, should not be set aside on review unless such action is not in accordance with law or regulations, is unsupported by competent material and substantial evidence, or is arbitrary or capricious. Brown v. United States, 396 F. 2d 989, 184 C. Cls. 501 (1968).

Under the JTR, the Per Diem, Travel and Transportation Allowance Committee has been charged with the responsibility of determining when a given factual situation satisfies the criteria set forth in the JTR for authorizing actual expense allowances for Department of Defense personnel. Upon review of expense data from the area where Mr. Elliott was on temporary duty, that Committee found that the criteria was not satisfied and declined to grant approval for actual expense allowances in that situation. On the basis of the present record we find no cause to disturb the findings and conclusions of the Committee.

In addition we find no merit in the claimant's contention that actual expenses were officially authorized by his superiors, causing him to make expenditures in reliance thereon. It is a well established

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principle that where a Government agent acts outside the scope of the authority actually held by him, the United States is not estopped to deny his unauthorized or misleading representations, commitments, or acts, because those who deal with a Government agent, officer, or employee are deemed to have notice of limitations on his authority.

In view of the foregoing, payment of the voucher is not authorized and accordingly it is being retained in our file.

Sincerely yours,

Paul G. Dembling
Acting Comptroller General
of the United States