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**DECISION**



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

50563

**FILE:** B-182728

**DATE:** FEB 18 1975

**MATTER OF:** Department of the Interior - per diem incident to temporary duty

- DIGEST:**
1. Claims by three Department of Interior employees for per diem incident to temporary duty on St. Croix, V.I., from which they voluntarily returned to their residences on St. Thomas, V.I., at close of each working day are disallowed since determination as to whether per diem will be authorized or approved is within discretionary authority of agency concerned, and agency policy was not to authorize per diem when employee voluntarily returned home each day.
  2. Where issuance of travel orders is properly within administrative discretion, once that discretion is exercised, resultant travel orders cannot be retroactively rescinded on sole basis of subsequent reversal of administrative policy. See Comp. Gen. decs. cited.

This action is in response to a request from an authorized certifying officer of the Division of Fiscal Services, Office of the Secretary, Department of the Interior, for a decision as to the propriety of the claims of Esther Smith, Elsa D. O'Bryan, and Helen A. Gumbs, employees of the Department of the Interior, for per diem incident to temporary duty on St. Croix, Virgin Islands.

The record indicates that the claimants were officially stationed on St. Thomas, V.I., employed in the Office of the Government Comptroller for the Virgin Islands, and that they performed temporary duty on St. Croix on various days within the period commencing August 23, 1973, and concluding January 24, 1974. In each case the claimants elected to return to their residences on St. Thomas at the close of each working day, rather than remain on St. Croix overnight at Government expense, and their travel vouchers show that more than 10 hours elapsed between leaving their homes on St. Thomas in the morning and returning to them at night.

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The record includes the following memorandum to staff from the Government Comptroller for the Virgin Islands, dated September 18, 1973, stating office policy concerning audit work performed on St. Croix and which, according to the Government Comptroller, had in fact been the policy prior to that date:

"It is the policy of this office that staff members performing audit work on St. Croix which will require more than one day will remain on St. Croix at Government expense for the duration of the audit work except for weekends and holidays.

"Staff members may, however, go back and forth daily for their own convenience providing they arrange their time for departure from St. Thomas and St. Croix so as to put in a full day's work on St. Croix. It will be considered that departure from St. Thomas no later than the 8:00 a.m. airboat and departure from St. Croix no earlier than the 5:16 p.m. airboat will fulfill this condition under most circumstances. No per diem will be paid under these circumstances."

On February 22, 1974, however, this policy was modified to authorize per diem at the rate of \$8 per day for trips involving more than 10 hours but less than 24 hours.

The general statutory authority for a per diem allowance is 5 U.S.C. 5702 (1970) which provides in pertinent part that "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." Federal Travel Regulations (FTR 101-7) para. 1-7.3a (May 1973), which implements the statute, states in pertinent part, that "It is the responsibility of each department and agency to authorize only such per diem allowances as are justified by the circumstances of the travel." Thus, there is no requirement that per diem in lieu of subsistence must be administratively authorized upon assignment to a temporary duty station. Moreover, per diem is intended to reimburse a traveler only where additional expense is incurred. See Bornhoff v. United States, 137 Ct. Cl. 134 (1956). The determination as to whether per diem will be authorized or approved is, therefore, within the discretionary authority of the administrative officials concerned. B-156699, May 24, 1965; B-163637, July 15, 1970; B-171969, November 14, 1973. In this regard we point out that such discretion given an agency is not diminished by

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FTR para. 1-7.6 d(1) (May 1973) which, by providing that "per diem shall not be allowed when the travel period is 10 hours or less during the same calendar day" creates a presumption that at least some of the expenses for which per diem is authorized are incurred where an employee's travel exceeds 10 hours. B-177419, March 3, 1973. Thus, under proper circumstances an agency may refuse to authorize or approve per diem for assignments, notwithstanding that the assignments may be of greater than 10 hours duration. B-176477, February 1, 1973.

There can be no retroactive application of the Government Comptroller's policy change of February 22, 1974, to cover claimants' travel. Our Office has consistently ruled that travel orders may not be modified retroactively to increase or decrease the rights which have become fixed under the applicable statutes or regulations in force at the time the travel was performed unless an error is apparent on the face of the order and all facts and circumstances clearly demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertence in preparing the orders. 23 Comp. Gen. 713 (1944); 24 id. 439 (1944); 43 id. 119 (1968). The memorandum of September 18, 1973, apparently reflects an administrative finding that no expenses for which a per diem allowance would be proper are incurred in the situation described therein. Where the issuance of a travel reimbursement policy is properly within administrative discretion, once that discretion is exercised, the resultant orders cannot be rescinded on the sole basis of a subsequent reversal of administrative policy. B-173978, December 20, 1971.

Accordingly, since the agency in exercising its discretion did not, until February 22, 1974, provide for a per diem allowance for temporary duty on St. Croix when an employee voluntarily returns to his official duty station on St. Thomas at the close of each workday, and since the policy change of February 22, 1974, cannot apply to temporary duty prior to that date, the subject claims should be disallowed.

R.F.KELLER

Deputy Comptroller General  
of the United States