

DECISION
1A5DIGEST - L - *Mil***THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

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FILE: E-184702

DATE: JUL 2 1976

MATTER OF: Major , USAF

DIGEST: Member, who occupied non-Government quarters on day of departure from a temporary duty station outside the United States, is entitled to the locality per diem rate, authorized by para. M4253-4(7) of the Joint Travel Regulations for that day and is not restricted to the travel per diem rate as otherwise prescribed in those regulations.

This action is in response to a letter dated January 31, 1975, from the Accounting and Finance Officer, Headquarters 436th Military Airlift Wing (MAC), Dover Air Force Base, Delaware 19901, concerning the propriety of making payment on a voucher in the amount of \$29.50, in favor of Major , USAF, for locality per diem rate allowance while occupying non-Government quarters on March 18, 1974, incident to the performance of temporary duty outside the United States. The request was forwarded to this Office by the Per Diem, Travel and Transportation Allowance Committee and has been assigned PDTATAC Control No. 75-25.

The record shows that by Special Order No. AB-215-BE, dated March 8, 1974, the member was ordered to active duty for 3 days, plus travel time, to perform a temporary duty (TDY) airlift mission from Greater Wilmington Airport, New Castle, Delaware, to San Juan International Airport, Puerto Rico, during the period from March 15 through 19, 1974. We understand that the member was accompanied by five others on the mission.

On March 18, 1974, the members departed from their TDY location in San Juan at 6:39 p.m., arriving at the Greater Wilmington Airport at 12:41 a.m., on March 19, 1974. All six members were paid per diem for March 18 at the prevailing San Juan locality rate of \$42, with no deductions for quarters. The record also indicates that Major occupied non-Government quarters at the Coco Mar Hotel in San Juan up until

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3:30 p.m., on the afternoon of March 18, 1974. However, the record contains no evidence, such as hotel receipts, indicating that commercial quarters for March 18, 1974, were actually paid for by the member. In this connection, the file contains a supplemental statement by the member, dated May 11, 1975, which certified that he had merely "occupied" the premises until 3:30 p.m., on that day, but did not indicate that he paid anything for the occupancy of the lodgings on the day of departure.

This Office questioned the validity of the payment of the locality per diem rate of \$42 for the day of departure and indicated that the proper allowance should have been the regular travel per diem rate of \$25, less 50 percent deduction for quarters not used on that day. It was recommended that collection action be undertaken to obtain the \$29.50 overpayment from each member, based on paragraphs M4253-3(1) and M4254-1a(1) of the Joint Travel Regulations (change 251, January 1, 1974).

Collection action was undertaken by the Accounting and Finance Officer, Dover Air Force Base, and return of the overpayment was obtained from the member on October 2, 1974. However, the Accounting and Finance Officer questioned the propriety of collecting on this voucher, indicating that the original payment of the locality rate was made in accord with paragraph M4253-4(7) of those regulations. He contends that such provisions were applicable to the member's case, and constitute an exception to the rate set forth in M4253-3. He requested that the collection action be postponed as to all affected members until a determination on the proper interpretation of M4253-4(7) is generated from an action on a reclaim voucher submitted by Major .

The general rule with regard to the payment of per diem for travel outside the United States is set forth in paragraph M4253-1 of the Joint Travel Regulations which provides in part:

"Travel per diem is payable for each day a travel status exists outside the United States. The per diem is payable for whole days and will not be prorated for fractional parts of a day irrespective of the time of departure or arrival. The location of a member at 2400 of each day generally determines the applicable

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rate of per diem for the day. * * * (Emphasis added.)

Paragraph M4253-3 delineates the circumstances where the regular travel per diem rate will be applied. Subparagraph (1) allows members the per diem rate of \$25, during all "periods of travel by all modes of transportation * * *", and subparagraph (2) allows that rate on the day of return to the permanent duty station. However, as an exception to the application of this regular rate in the circumstance where other than Government quarters are used, paragraph M4253-4 (change 251, January 1, 1974), provides in part that a member is entitled to the locality per diem rate:

"7. on any day when other than Government quarters are used, even though the member is in a status at 2400 which would normally result in entitlement at the \$25 per diem rate prescribed in subpar. 3. The locality per diem rate applicable at the point where the quarters are used will apply on such days. * * * (Emphasis added.)

The view taken by the Accounting and Finance Officer at Dover Air Force Base is that this latter provision creates an exception that would allow the prevailing locality rate to be applied whenever non-Government quarters are used (assuming utilization is authorized), on the day of departure from a temporary duty station outside the United States without regard to the member's location at 2400 hours. It was suggested that in order for M4253-4(7) to be applied, there is no requirement that receipts be produced as evidence that commercial quarters were actually paid for; there is need only to show that the member had actually occupied commercial quarters during some period of time on the day of departure.

The purpose for authorizing a specific per diem for a particular locality or situation is to offset the approximate daily costs incurred by the member at that location or in that situation. It would seem appropriate therefore that an increased per diem rate should be allowed only when the member incurs excess costs for the period in question. In the situation presented the member arrived in Puerto Rico at 4:10 p.m., on March 16, 1974, and departed Puerto Rico at 6:39 p.m., on March 18, 1974. Thus, he remained in

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Puerto Rico for just over 2 days and there is no indication that he paid for commercial accommodations for more than 2 days. However, under the settlement originally made the member was paid for 3 days' per diem at the rate applicable to Puerto Rico.

On the other hand the provisions of the regulations in question are reasonably subject to the interpretation that per diem for 3 days was payable at the Puerto Rico rate because the member in fact occupied commercial quarters on March 18, 1974. Further, rules for payment of per diem are designed to approximate expenses incurred and not to provide actual expense reimbursement. Thus, although it does appear that per diem payments authorized under that interpretation of the applicable regulations result in a payment in excess of that necessary to cover expenses incurred, we do not find that there is a restriction in the regulations which would deprive the member in this case of per diem computed under paragraph M4253-4, item 7.X

Accordingly the reclaim voucher may be certified for payment and the charge against the member and those similarly situated should thereby be cancelled.

Since changes made in per diem entitlements following the enactment of the act of May 29, 1976, Public Law 94-296, will *37VSC* *404 mat* apparently change the result in situations such as the one here in question and cause the per diem paid to be more nearly equal to the member's payable costs, no recommendation is made for a change of regulations to avoid further payments of excessive per diem.

W. J. KELLER

Deputy Comptroller General
of the United States