

DECISION



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

FILE: B-185662

DATE: JUL 21 1976

MATTER OF: James P. Thorne - Supplementary Post Allowance

DIGEST:

Civilian employee and his family transferred to new duty station at Frankfurt, Germany, occupied nonhouse-keeping transient-type quarters during which their cost for restaurant meals substantially exceeded the cost of such meals if prepared in housekeeping quarters. Since supplementary post allowance is available to defray extraordinary subsistence costs which exceed that portion of employee's salary and post allowance ordinarily spent for food and household expenses while occupying housekeeping quarters, employee may be granted allowance, not to exceed amount prescribed by Department of State Standardized Regulations § 235 (August 27, 1974).

This action concerns a request dated December 5, 1975, from Samuel B. Gilreath, Jr., a disbursing officer for the Corps of Engineers, Department of the Army, as to the propriety of certifying for payment the voucher of Mr. James P. Thorne for a supplementary post allowance incident to the transfer of his official duty station from Mobile, Alabama, to Frankfurt, Germany, in November, 1974.

The record indicates that the claimant, Mr. Thorne, accepted a position as Reproduction Foreman, U.S. Army Engineer Division, in Frankfurt upon the understanding that Government quarters would be provided for him and his family. Upon arrival on November 8, 1974, Mr. Thorne was advised by the Civilian Personnel Office that he was eligible for Government quarters and that he should not seek housing on the local economy since assignment to such quarters would be made in 4 to 12 weeks. He was subsequently informed that by reason of his wage grade, WS-6, he was eligible only for assignment to excess housing, which would not be available for an indefinite period. Because of the unavailability of Government housing and other factors, the claimant requested a release from his transportation agreement, which was granted. After reassignment to his former duty station, the U.S. Army Engineer District, Mobile, Alabama, Mr. Thorne departed on January 21, 1975, for authorized travel to Mobile.

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Mr. Thorne and his family occupied hotel rooms without kitchen facilities during their residence in Frankfurt. Although reimbursed for temporary lodging expenses actually incurred, the claimant has not been specifically reimbursed for additional subsistence expenses incurred while occupying transient quarters. He has stated that his actual subsistence costs during that period were \$33 per day, and has estimated that, were he living in temporary housing with a kitchen, those costs would have been \$12.72 per day. He therefore has claimed \$1,500 for the supplemental post allowance.

Mr. Thorne's claim was administratively denied on April 23, 1975, by the Frankfurt Area Civilian Personnel Officer. In denying the claim, the officer cited as authority therefor, the Department of the Army Civilian Personnel Regulations (DA CPR) ch. 592, Department of State Standardized Regulations (Government Civilians, Foreign Areas) Section 230, and United States Army, Europe (USAREUR) letter AEAGA-CE dated March 26, 1973. Fearing the legend "this letter expires 1 year from date of publication," the USAREUR letter states, in relevant part:

"An employee should normally expect to spend a substantial portion of his salary for restaurant meals while living in a hotel; the supplementary post allowance is intended to help only those employees with unusually heavy food expenses. The Department of the Army advised that employee expenditures beyond the alleged costs of preparing meals in the home are not necessarily 'unusually heavy food expenses.' Menu prices comparable to those prices in Army clubs and messes, for example, would not warrant considering such meals as 'high cost.' One of the conditions governing eligibility for the allowance in this connection is that the family is unable to use less expensive eating facilities."

Concluding that Army clubs and messes were available to Mr. Thorne, a point contested by the claimant, the personnel officer denied the claim.

In a previous decision we stated that it was our understanding that the purpose of the supplementary post allowance was to reimburse an employee for the difference in cost between high cost hotel and restaurant meals and those he ordinarily would have incurred, had moderate cost meals been available in the area of his hotel or temporary lodging place. B-176979, April 30, 1973. In that case,

the employee's cost of meals at a Navy Snack Bar exceeded the cost of similar meals prepared at home by about \$360. In B-176979, November 27, 1972, an earlier decision with regard to the same claim, we affirmed denial of the supplementary post allowance. We there stated:

"the pertinent regulation, however, does not predicate entitlement to the supplementary post allowance upon the extent to which an employee's family's meal costs exceed their costs while living at home, but rather upon the extent to which their actual meal costs exceed the cost of obtaining meals at less expensive commercial eating facilities."

Our decision in that case was based on Section 233d of the Standardized Regulations (December 10, 1971) which then provided that the allowance may be granted only among other conditions:

"d. while the family is unable to utilize less expensive eating facilities, such as an inexpensive nearby restaurant * * *."

Subsequent to the dates of our decisions in B-176979, the Department of State revised Section 230 of the Standardized Regulations to broaden the scope and availability of the supplementary post allowance. Explaining the changes, which became effective on August 27, 1974, the Department stated in its transmittal letter TL:SR-250 dated September 1, 1974:

"The revisions are made in order to avoid penalizing employees, given the significant increase in restaurant meal prices in foreign areas due to inflation and currency revaluation."

Prior to the 1974 revision, section 232 of the Standardized Regulations had provided, in part:

" * * * Authorizing officers should, of course, bear in mind that an employee should normally expect to spend a substantial portion of his salary for restaurant meals while living in a hotel, and that this allowance is intended to help only those employees faced with unusually heavy food expenses."
(Emphasis original.)

This sentence was omitted by the 1974 revision, thus liberalizing

the availability of benefits. Section 233, which sets forth the conditions of eligibility, was substantially altered. Deleted were requirements that the head of the agency make an eligibility determination (§ 233a), that the family exceed one person (§ 233b), and that the family be unable to utilize less expensive eating facilities, such as inexpensive nearby restaurants (§ 233d). As revised (August 27, 1974), section 233 provides:

"233 Conditions Governing Eligibility

A supplementary post allowance may be granted:

- a. on behalf of the employee and each family member;
- b. while the employee is required, by lack of available temporary quarters having kitchen facilities adequate for the preparation of meals, to occupy nonhousekeeping transient-type quarters;
- c. for periods not in excess of three months after date of first arrival at a new post and for periods not in excess of one month preceding date of departure from the post."

Because under section 231a the supplementary post allowance is granted to defray extraordinary subsistence costs, the incurrence of such costs is, by necessary implication, a further condition of eligibility. Extraordinary subsistence costs are defined in section 231b as:

" * * * those costs which exceed (a) that portion of the employee's salary which he or she would ordinarily spend for food and household expenses while occupying housekeeping quarters and (b) that portion of his or her post allowance, if any, related to his or her food and household expenses." Standardized Regulations § 231b (August 27, 1974).

By this new section, and by omitting the former section 233d, also quoted above, the Department has eliminated the previous limitation that the family utilize "less expensive commercial eating facilities." Because our earlier decisions in B-176979, supra, were based upon the regulation as it read prior to modification, those decisions must be limited to the facts and

circumstances described therein and are no longer to be followed with regard to the granting of a supplementary post allowance occurring on or after August 27, 1974.

Regarding the personnel officer's reliance on the March 26, 1973, USAREUR letter in denying Mr. Thorne's claim, we note that the letter had, by its own terms, expired prior to the events which form the basis of his claim. Since there is no indication in the record that the letter was extended for an additional period of time, reliance thereon was inappropriate.

Concerning the claimant's eligibility for the allowance, the record indicates that he and his family occupied nonhousekeeping transient-type quarters for a period of less than three months after his arrival in Frankfurt. Mr. Thorne's computation of his family's actual subsistence expenses and of such expenses ordinarily incurred while occupying housekeeping quarters are not administratively questioned, and reasonably support the conclusion that he incurred extraordinary subsistence cost. Accordingly, the claimant is eligible for the supplementary post allowance.

The manner of calculation of the allowance is set forth in the Standardized Regulations (August 27, 1974) as follows:

"235 Determination of Rate

A supplementary post allowance shall be granted to an employee at the daily rate prescribed in section 941.6 as determined by the classification of the post for post allowance in column 4, section 920, and the travel per diem rate prescribed for the post in section 925, unless the officer designated to authorize allowances determines that a lesser amount is warranted. Married couple employees do not receive duplicate payments."

Since the post classification for Frankfurt is 0 (zero) and the travel per diem rate therefor is in excess of \$18, the maximum allowable supplementary post allowance prescribed at section 941.6 of the Standardized Regulation is \$6 per day for the employee and an equal amount for each family member. Accordingly, although the voucher for \$1,500 may not be certified for payment, a supplementary cost allowance determined on the basis of \$6 per day for the employee and each of his two dependents, or such

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lesser amount as is determined to be appropriate under section 235, above, may be paid to the claimant.

In addition to the above, the disbursing officer has asked whether amounts determined to be due Mr. Thorne may be paid by the Army's disbursing office in Mobile, Alabama, and billed to the European Division, Corps of Engineers. Insofar as the proposed payment procedure does not involve more than a single appropriation and is consistent with Army procedures, we see no basis for objection.

[R.F. KELLER]

Deputy] Comptroller General
of the United States