DECISION

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

FILE: B-186045

DATE: NOV 4 1976

MATTER OF: Willie L. Adams, et al. - Claims by seasonal employees for per diem

DIGEST:

Temporary employees of Corps of Engineers (Corps) performed seasonal work on board Corps boats on Mississippi River. Claim for per diem when quarters and/or subsistence was not provided is denied since boat was designated official duty station and per diem may not be paid at official duty station. Further, statute authorizing quarters and/or subsistence on board Corps vessels does not entitle these employees to such benefit or to allowance in lieu thereof under these circumstances.

This action is a reconsideration of the denial by our Claims Division of the claims of Mr. Willie L. Adams and 105 other individuals for per diem for duty performed prior to 1971 while employed as temporary or seasonal employees by the Corps of Engineers (Corps), Department of the Army, and assigned to Bank Protection Units (boats) Nos. 9 and 11. The claims were denied on the grounds that it was not shown that the designation of the Unit as the official duty station of the claimants was arbitrary or erroneous and that there is no other authority which mandates that the claimants are entitled to quarters and subsistence or per diem in lieu thereof under the circumstances present.

The record indicates that the claimants were employed on a temporary or seasonal basis by the Corps of Engineers to perform work on the banks of the Mississippi River on board Bank Protection Units Nos. 8, 9, and 11. The work force on those units consisted of permanent employees of the Corps whose official duty stations were located other than where the Units were operating and who were assigned to these Units on temporary duty during the revetment operating season, and temporary or seasonal employees whose official duty station prior to 1971 was designated by the Corps to be the Unit to which they were assigned, wherever it was located. When a Quarterboat was associated with one of the Units, the crew, both permanent and temporary employees, was furnished free quarters and subsistence. However, when the Quarterboat was not operational, the permanent employees received per diem while the temporary

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employees did not. The administrative report states that Unit No. 9, which loaded mats for eventual placement on the river banks by another Unit, operated from a number of "well-established locations, close to adequate commercial sleeping and eating facilities," and that the permanent employees received per diem while the temporary employees did not. Unit No. 11 graded the river banks in preparation for the placing of the mats, and, when the Quarterboat was not operational, the permanent employees received per diem and the temporary employees did not. Finally, Unit No. 8, which placed the mats on the river banks, utilized a Quarterboat at all times.

Prior to 1971, the Corps determined that, due to the mobility of the Units to move where repairs or services were needed on the river and due to the general practice of hiring and terminating temporary employees at each location, the official duty station of the temporary employees would be the Unit itself, wherever it was located. Thus, if a temporary employee followed the Unit to a new location, there would be no change of official duty station, and per diem would not be allowed since the Unit was his duty station. This determination was considered proper and in accordance with our decision in 31 Comp. Gen. 289 (1952). However, in 1971 the Corps reviewed its early determination in view of a more stabilized work force, a change in the labor situation, and the advantages of having the same crew work throughout the season, and the Corps concluded that the official duty station of these temporary employees would be the geographic site where the greatest percentage of work would be performed. The Corps concluded that the latter determination would be consistent with our decisions in 31 Comp. Gen. 289, supra, and 22 id. 342 (1942). The claimants, however, contend that it was discriminatory to the temporary employees on Units Nos. 9 and 11 not to allow them per diem when quarters and subsistence were provided for Unit No. 8 and when per diem was otherwise provided to the permanent employees on Units Nos. 9 and 11.

There are a number of conflicts between the facts as stated by the claimants and the facts as reported in the administrative report. Where the Corps states that the temporary employees were usually hired from local areas along the river worksites, the claimants disagree and contend that they are from the 5-state area of Tennessee, Arkansas, Missouri, Kentucky, and Mississippi. The Corps states that with respect to Unit No. 9 the worksite was close to adequate commercial sleeping and eating facilities, but

the claimants argue that the nearest towns were 7 to 15 miles away, that long-term sleeping and eating arrangements could not be made, and that it was impractical for the claimants to commute home each day. Finally, the administrative report states that due to changed conditions such as a more stabilized work force, a change in the labor situation, and the advantages of having the same crew work throughout the work season, it was determined that the official duty station for the temporary employees should be changed, but the claimants argue that the working conditions, units, and work assignments were the same both before and after 1971.

When there is a conflict over the facts, such as presented here, our Office generally accepts the facts as reported by the Government agency, absent evidence furnished by a claimant which clearly shows the facts submitted by the Government agency to be in error. See B-180638, August 30, 1974, and cases cited therein. We do not believe that the evidence submitted by the claimants is sufficient to overcome the facts as reported by the administrative agency.

As noted in the Settlement Certificates, Section 5702 of title 5, United States Code (formerly 5 U.S.C. 836) provides that an employee traveling on official business away from his designated post of duty is entitled to a per diem allowance as prescribed by the agency concerned. The implementing regulations in effect during the period of the claims, the Standardized Government Travel Regulations, Circular A-7, provide, in Section 6.8, that per diem will not be allowed an employee either at his permanent duty station or at his place of abode from which he commutes daily to his official duty station. Our Office has long held that an employee's official duty station is the place where he expects, and he is expected, to spend a greater part of his time. 32 Comp. Gen. 87 (1952); 31 id. 289 (1952). We have also held that the authority to designate a post of duty or official duty station does not include the authority to designate a place contrary to the factual circumstances present for the purpose of paying per diem. 31 Comp. Gen. 289, supra, 19 id. 347 (1939); 10 id. 469 (1931). Therefore, whether a particular duty station is in fact permanent or temporary is not merely a matter of administrative designation but also a question of fact to be determined from the employee's orders, the nature and the duration of the assignment, and the duty to be performed. 32 Comp. Gen. 87, supra; B-172207, July 21, 1971.

The record indicates that part of the work force on board these Units were permanent employees of the Corps whose official duty station was designated somewhere other than the Unit (apparently at Corps facilities such as Memphis, Tennessee). These employees were assigned to these Units on a temporary duty basis during the seasonal operation of these Units and, while the record is not complete, it does not appear that the designation of the Unit as a temporary duty station was improper or erroneous. Accordingly, payment of per diem when quarters and subsistence were not provided to these employees would be proper.

The claimants, temporary employees who were hired by the Corps for seasonal work on board the Units, did not have a permanent duty station for which they reported in the off-season. Furthermore, the Corps reports that generally these employees were hired from local areas along the river worksites and that generally adequate commercial sleeping and eating facilities were located nearby. Therefore, the Corps concluded that in view of our decision in 31 Comp. Gen. 289, supra, the Unit would be considered the temporary employee's duty station and per diem would not be authorized. In our decision 31 id. 289, supra, we held that where for all intents and purposes Albany, New York, was an employee's official duty station, the fact that New York City was designated as his duty station would not entitle him to per diem since most of his official duties were performed in Albany. On the basis of the record before us, we cannot conclude that the Corps' determination of the headquarters of the temporary employees in the present case was erroneous.

In 1971, the Corps determined that, in view of the desirability of retaining the same crew throughout the season, a realized change in the labor situation and a more established work force, the official duty station of the temporary employees would be the geographic site where the greatest percentage of work would be performed since this determination would be consistent with our decision in 22 Comp. Gen. 342 supra. In 22 id. 342, supra, we held that an itinerant field employee hired to perform mapping work may be authorized per diem while traveling away from his first duty station or, perhaps, upon his return to his first duty station if, depending on the circumstances, his first duty station is not his permanent duty station. The determination of the Corps in 1971 appears to be consistent with our decisions cited above.

Further, as noted in our Claims Division settlement, under the authority of 5 U.S.C. 5947(a) (Supp. V, 1975), the Corps may furnish its employees quarters or subsistence, or both, on board vessels. The only entitlement to an allowance or per diem in lieu of quarters or subsistence is provided under the authority of 5 U.S.C. 5947(b), which was added as an amendment in 1971 and which, by its terms, provides the employee the benefit of per diem when he cannot otherwise avail himself of quarters and/or subsistence due to adverse weather conditions or when the vessel is undergoing repairs. There has been no showing that the claimants are entitled to per diem under the authority of the above-cited provisions.

Accordingly, we must sustain the action of our Claims Division in disallowing these claims for per diem.

With regard to the question of further appeal of the determination reached on these claims, it is noted that decisions of the Comptroller General of the United States rendered on claims settled by the General Accounting Office are conclusive upon the executive branch of the Government, and there is no procedure prescribed for appealing from such decision. See 31 U.S.C. 74 (1970). Independent of the jurisdiction of the General Accounting Office, the United States Court of Claims and the United States District Courts have jurisdiction to consider certain claims against the United States if suit is filed within six years after the claim first accrued. See 28 U.S.C. 1346(a)(2), 1491, 2401, and 2501.

[R.F.KELLER
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