**DECISION**

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

FILE: B-186643 DATE: October 28, 1976

MATTER OF: Fred Frishman - Per diem for lodging in noncommercial quarters

DIGEST: Employee on temporary duty away from headquarters lodged at his second home. Employee's claim for lodging expenses is denied. Lodging expenses must be directly attributable to his official travel and be incurred as a direct consequence of his official travel. Generally, it would be reasonable to ascribe a "no cost" factor to those nights employee spends at his second home.

This action is a response to an appeal by Fred Frishman of our Claims Division settlement dated March 26, 1975, disallowing his claim for reimbursement of expenses incurred for temporary quarters in connection with temporary duty performed in Washington, D.C., during the period September 12-14, 1973, as an employee of the United States Army Research Office, Durham, North Carolina. The Claims Division settlement disallowed the claim because no evidence could be found of additional lodging expense since Dr. Frishman resided in a second home in the Washington, D.C. area during the time in question and did not incur lodging expenses as such.

In support of his claim for additional per diem reimbursement, Dr. Frishman states that lodging expenses were incurred by him as a result of his residing in his second home. Further, Dr. Frishman points out that such expenses were much less than the cost of a hotel room, thereby saving the Government money. Dr. Frishman also cites our recent decision involving Dr. Curtis Tarr, B-181294, March 16, 1976, in support of his claim.

Section 5702 of title 5, United States Code, in effect at the time in question, provided that, under regulations prescribed by the Office of Management and Budget, employees traveling on official business were entitled to a per diem allowance inside the continental United States at a rate not to exceed $25 a day. Implementing regulations appear in the Federal Travel Regulations (FPMR 101-7) (May 1973), as amended. FTR para. 1-7.3 (May 1973) provided in pertinent part as follows:

> "c, When lodgings are required. For travel in the conterminous United States when lodging away from the official station is required, agencies shall fix per diem for employees partly on the basis of the average amount the traveler pays for lodgings. To such an amount (i, e., the average of amounts paid for lodging while traveling on official business during the period covered by the voucher) shall be added a suitable allowance for meals and miscellaneous expenses. The resulting amount rounded to the next whole dollar, if the result is not in excess of the maximum per diem, shall be the per diem rate to be applied to the traveler's reimbursement in accordance with the applicable provisions of this part. If the result is more than the maximum per diem allowable, the maximum shall be the per diem allowed. No minimum allowance is authorized for lodging since those allowances are based on actual lodging expenses. * * *"

As stated by the Court of Claims in Bornhoft v. United States, 137 Ct. Cl. 134, 136 (1956), "[a] subsistence allowance is intended to reimburse a traveler for having to eat in hotels and restaurants, and for having to rent a room * * * while still maintaining * * * his own permanent place of abode. It is supposed to cover the extra expenses incident to traveling." Cf., also B-174983, March 31, 1972, wherein we held that it was reasonable to ascribe a "no cost" contribution for nights spent by an employee at a residence owned by him, for purposes of computing average housing expense for per diem for lodging, since additional expenses there would be inconsequential. Reimbursement is founded on lodging expenses necessarily incurred on official travel. It is based upon those lodging expenses which the employee was properly required to pay as a direct consequence of his official travel. 52 Comp. Gen. 730 (1973); cf. B-168384, February 19, 1975.

In 35 Comp. Gen. 554 (1956) we considered the entitlement to per diem of an employee whose duty station had been changed from Washington, D. C., to Philadelphia, Pennsylvania, but whose immediate family continued to reside in Washington, D. C. The employee rented accommodations in Philadelphia from which

he regularly commuted to his headquarters. While on temporary duty near Washington, D.C., the employee lodged with his family. We indicated in that decision that since for the period of temporary duty the employee stayed at a residence from which he did not regularly commute to his headquarters, the payment of a per diem allowance was not legally objectionable. We there stated:

"Assuming from your submission that this employee does not regularly commute to Washington, D.C., and Philadelphia, Pennsylvania, our Office would not be required to object, as a matter of law, should you in his travel orders, authorize the payment of per diem in lieu of subsistence to this employee while in a temporary duty status absent from his Philadelphia headquarters notwithstanding that during certain portions of his temporary duty he may obtain his lodging or subsistence with his family in Washington, D.C. That is your administrative responsibility, to be guided only by the directive and caution contained in paragraph 45 of the Standardized Government Travel Regulations, namely, that travel orders should 'authorize only such per diem allowances as are justified by the circumstances affecting the travel' and that the fixing of a per diem allowance should not be 'in excess of that required to meet the necessary authorized expenses.'"

Our decision B-181294, March 16, 1976, cited by the claimant, concerned Dr. Curtis Tarr, who served as chairman of a Commission. The chairman resided in Illinois and was required to travel to Washington, D.C., two or three times a month for Commission meetings. When the chairman was first appointed to the Commission, he had a home in Arlington, Virginia, and an apartment in Moline, Illinois. When he attended Commission meetings, his residence was his home in Arlington, and he was not authorized per diem and travel expenses. The chairman sold his home in Arlington and moved to a new home in Moline effective July 1, 1975. At that time he made arrangements to rent an apartment

for $220 per month in Washington, D.C., because he felt that he might not be able to obtain hotel rooms when he came to Washington intermittently on Commission business. We there held that the apartment need not be considered a second residence and that the chairman was eligible for reimbursement of lodging costs while on Commission business in the District of Columbia by means of an actual subsistence expense allowance. His case is to be distinguished from Dr. Frishman's case in that the chairman rented the apartment after his need for lodging in Washington for official Commission business became apparent. Dr. Frishman purchased his Washington residence prior to his need to perform temporary duty and therefore it cannot be said to have been as a direct result of this need.

We held in 52 Comp. Gen. 78 (1972) that the cost of temporary quarters obtained from close relatives and apparently fixed in an attempt to recover maximum reimbursable expenses was unreasonable. Pointing out that the applicable regulations, now contained at Federal Travel Regulations (FPMR 101-7) para. 2-5.4 (May 1973), authorized payment of a temporary quarters allowance based, in part, on receipts for lodging expenses actually incurred, we stated:

> "* * * that in the past we have allowed reimbursement for charges for temporary quarters and subsistence supplied by relatives when the charges have appeared reasonable; that is, where they have been considerably less than motel or restaurant charges. It does not seem reasonable or necessary to us for employees to agree to pay relatives the same amounts they would have to pay for lodging in motels or meals in restaurants or to base such payments to relatives upon maximum amounts which are reimbursable under the regulations. Of course, what is reasonable depends on the circumstances of each case. The number of individuals involved, whether the relative had to hire extra help to provide lodging and meals, the extra work performed by the relative and possibly other factors would be for consideration. In the claims here involved as well as similar

claims we believe the employees should be required to support their claims by furnishing such information in order to permit determinations of reasonableness."

While we recognize that possibly some additional lodging expenses are incurred by an individual when he spends the night at his second home as opposed to staying somewhere else, nevertheless, we believe such expenses would be inconsequential. Therefore, under the regulations previously quoted, it is reasonable to ascribe a "no cost" factor to those nights an employee spends at his home. In this regard we note that a per diem determination has been made by the approving officer that a rate of $11.80 would be reasonable and justified by the circumstances.

Accordingly, the settlement of March 26, 1975, denying the claim is sustained.

Deputy Comptroller General
of the United States