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**DECISION**



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

FILE: B-192246.2

DATE: April 26, 1979

*per name*

MATTER OF: James H. Morrill - Claim for additional per diem incident to travel from Official Duty Station

DIGEST: Employee, who was authorized prior to departure on annual leave to attend meeting near his leave point, claims per diem for traveltime to and from temporary duty station. Travel authorization is ambiguous because it states "TRAVEL AT NO COST TO GOVERNMENT," but authorizes per diem. However, since the employee had to begin travel 2 days before his leave started, he may be allowed per diem for traveltime to and from temporary duty station.

*AGC00005*

*DLG00921*

This action is in response to a request for an advance decision from W. Smallets, Chief, Finance and Accounting, National Security Agency, Department of Defense (DOD), Serial: N41/501, concerning the entitlement of Mr. James H. Morrill, a DOD employee, to additional per diem incident to travel away from his official duty station. This request has been referred to our Office through the Per Diem, Travel and Transportation Allowance Committee and has been assigned PDTATAC Control No. 78-50. The issue is whether the employee may be allowed per diem while traveling to and from his temporary duty point in addition to the per diem at that location under the circumstances shown below.

The agency reports that prior to his departure on annual leave, Mr. Morrill traveled to Bedford, Massachusetts, to attend a meeting held on July 22, 1977. The record indicates that Mr. Morrill departed his headquarters at Fort Meade, Maryland, at 3:30 p.m. on July 21 and arrived at his temporary duty point at 12:30 a.m., July 22, 1977. He then performed his temporary duty on July 22 and, left on annual leave the following morning. After a period of annual leave, he performed additional temporary duty under different orders and returned to his headquarters on August 6, 1977.

The authorization for this travel was a confirmatory travel order, No. TD708251, dated July 22, 1977, which stated that the period of temporary duty including traveltime would be approximately 1 day. The travel order did not authorize transportation,

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but the order did authorize per diem in accordance with the applicable regulations at an estimated cost of \$35. In the remarks section, the order stated "TRAVEL AT NO COST TO GOVERNMENT."

In connection with this travel, Mr. Morrill has claimed per diem for 1/2 day on July 21, a full day on July 22, and 3/4 day on August 6, 1977. He states that because he had already planned leave at Cape Cod, Massachusetts, starting July 23, 1977, and because travel funds were short, he agreed to drive his automobile to and from the temporary duty point at no cost to the Government. Mr. Morrill argues, however, that the approving official agreed to pay the normal per diem for the temporary duty and traveltime. In this regard, the agency official who approved the travel has submitted a memorandum and "sample" travel authorization to reflect his original intention to authorize 2-1/4 days' per diem.

The administrative office has refused to pay any per diem for travel to and from the temporary duty point since the original travel orders stated that the travel would be at no cost to the Government and orders were "funded" for only 1 day's per diem. The agency questions any additional entitlement to per diem in light of the general prohibition on retroactive amendments to travel orders.

Under the authority of 5 U.S.C. §§ 5702, 5704 (1976) and the implementing regulations, the Federal Travel Regulations (FTR), employees who travel on official business away from their duty station are entitled to travel and subsistence expenses. We note that under the provisions of FTR para. 1-1.4, all travel must be authorized or approved by the proper agency official. Ordinarily an authorization should be issued prior to the incurrence of expenses and the authorization is to be "as specific as possible in the circumstances as to the travel to be performed."

In the present case, the agency feels compelled to limit the employee's entitlement to per diem based upon the travel authorization which estimated the per diem cost at \$35 and approximated the number of days of temporary duty at 1 day. However, we do not view the original travel authorization as precluding the payment of per diem for Mr. Morrill's traveltime to and from the temporary duty station.

We believe the situation in the present case is distinguished from that in such a case as Donald F. X. McIntyre, B-192636, December 15, 1978. In that case the agency did not authorize

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reimbursement for travel due to a freeze on travel funds and we held that the employee could not later be reimbursed for his travel expenses after the freeze on travel funds was lifted. Also, in McIntyre, neither transportation nor per diem was authorized, and the travel authorization clearly stated that the employee was traveling at his own expense. In the present case, the travel authorization is ambiguous since it states that "travel" shall be at no cost to the Government but it authorizes per diem. Moreover, the authorization does not state with specificity, as required by FTR para. 1-1.4, the circumstances under which the travel was to be performed. Particularly, it does not state that the employee was to perform the temporary duty in connection with his annual leave starting on July 23, 1977, and that he had to begin his travel 2 days before that date. Therefore, although the matter is not entirely free from doubt, we believe that the approving official intended only to preclude the payment of transportation expenses to Mr. Morrill, that is, his mileage expenses to and from a temporary duty station which was in the vicinity of the place he intended to take leave.

With regard to Mr. Morrill's entitlement to per diem, our Office has held that when an employee is authorized prior to departure on annual leave to proceed on official travel to a temporary duty station and return, he is entitled to those travel expenses which would have been incurred had he traveled directly between the temporary duty station and his headquarters. See 24 Comp. Gen. 443 (1944); and Wallace W. Tanaka, B-187926, June 8, 1977. In the present case, Mr. Morrill was authorized prior to his departure on annual leave to travel from his headquarters to Boston Massachusetts, which is near Bedford, and return. Under the circumstances we believe he is entitled to the applicable per diem for his traveltime to and from his temporary duty station.

As the agency has pointed out, we have long held that travel orders may not be revoked or modified retroactively so as to increase or decrease the rights and benefits which have become fixed under the applicable statutes and regulations. See McIntyre, supra, and decisions cited therein. However, in the present case we do not believe that Mr. Morrill's entitlement to additional per diem is based upon a retroactive amendment or modification to the original travel orders. Instead, we find that his entitlement is based upon a more reasonable interpretation of his original travel authorization.

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Accordingly, Mr. Morrill's claim for additional per diem may be allowed consistent with the above discussion if otherwise proper.

  
Deputy Comptroller General  
of the United States