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DECISION



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

FILE: B-195908

DATE: January 22, 1981

MATTER OF: Frederick Benedict - [Computation of constructive travel entitlements]

DIGEST: Employee, who traveled by privately owned vehicle on temporary duty for his personal convenience, requests that his constructive travel entitlements be increased by the amount of per diem he would have received if he had traveled by common carrier. Employee's constructive travel was properly computed by using actual expense method for time he would have spent traveling by airplane. His travel orders provided for actual expense and his agency computed constructive travel properly since it is unlikely that employee would have incurred additional expenses while traveling by airplane.

Mr. Frederick Benedict appeals the settlement of our Claims Group denying his claim for per diem for his constructive traveltime.

Mr. Benedict, an employee of the Federal Aviation Administration, at Fremont, California, was ordered to Washington, D.C., for temporary duty on August 15 and 16, 1974. Mr. Benedict's travel orders authorized actual subsistence expenses not to exceed \$35 per day and also stated that travel by privately owned conveyance was for the employee's personal preference. The travel orders specifically limited reimbursement for travel to "constructive air time and costs."

Pursuant to this temporary duty assignment, Mr. Benedict claimed, among other items, per diem for time that he would have spent traveling by airplane to Washington, D.C., based on a constructive travel schedule. The Federal Aviation Administration denied Mr. Benedict's claim on the basis that his travel orders authorized actual subsistence expenses, not per diem, and computed his constructive entitlement by using the actual subsistence expense method.

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For the reasons that follow, we sustain the action of the Federal Aviation Administration and our Claims Group in denying this claim.

As an employee who was authorized to travel by privately owned conveyance with reimbursement limited to the cost of constructive travel by common carrier, Mr. Benedict's entitlements are controlled by the provisions of Federal Travel Regulations (FPMR 101-7), par. 1-4.3 (May 1973). That paragraph provides for payment of the actual travel performed, limited to the constructive cost of travel by the appropriate common carrier authorized in the travel orders. Thus, his constructive travel should be computed on the basis of travel by commercial airline, plus appropriate subsistence.

The rule for computing subsistence is provided by, FTR paragraph 1-4.3c, which states:

" Per diem allowance. The constructive per diem shall be the amount which would have been allowable if the traveler had used the carrier upon which the constructive transportation costs are determined."

Although actual subsistence expense is not specifically mentioned, we believe that the intent of the above paragraph is to limit the Government's liability to what it would have cost if the employee had traveled directly by the authorized mode of transportation, including subsistence as authorized in the travel orders.

Since Mr. Benedict's travel orders prescribed actual expense reimbursement, the upper limit of his constructive entitlement to subsistence must be computed as if he had traveled by airplane to Washington, D.C., under the actual subsistence method. See B-181573, February 27, 1975. Because it is unlikely that Mr. Benedict would have incurred any reimbursable subsistence expenses while en route by airplane to Washington, D.C., we believe that the agency properly determined that no additional subsistence expense should

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be included in determining his entitlements on a constructive basis.

Accordingly, Mr. Benedict's claim is denied.

A handwritten signature in cursive script, appearing to read "Milton J. Forster".

For the Comptroller General
of the United States