

DECISION

18538
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

PLM-
Putnam

FILE: B-197134

DATE: June 18, 1981

MATTER OF: Pearl Harbor Naval Shipyard - [Per Diem
Allowances for Extended Training] -
Meritorious Claims

DIGEST:

Six civilian employees of the Pearl Harbor Naval Shipyard received per diem at the higher rate in effect prior to August 1, 1976, during various dates between May 28, 1977, and January 29, 1980. Change in JTR, effective August 1, 1976, reduced per diem to 55 percent for extended training. No basis exists for allowing the higher per diem for the training performed after effective date of lower rate. However, since the overpayments resulted from administrative failure to implement the regulatory change in the per diem rate over an extended period of time, the rate reduction was so substantial, and the employees acted in good faith, the equities warrant reporting the claims to Congress under Meritorious Claims Act, 31 U.S.C. § 236.

This decision is rendered with respect to six employees at the Pearl Harbor Naval Shipyard (PHNS), Department of the Navy, Pearl Harbor, Hawaii, who, while attending training schools for periods in excess of 120 days commencing at various dates during the period May 28, 1977, to January 29, 1980, were paid per diem allowances in excess of that authorized by the Joint Travel Regulations (JTR). The Comptroller's Department, PHNS, has collected all of the indebtednesses allegedly owed the United States from the six employees. The basis for the collection action was that the per diem rate authorized for civilian employees by the JTR, Volume 2, had been changed to a reduced rate of 55 percent of full per diem for extended training of 120 days or more, effective August 1, 1976.

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Two of the six employees, Apolonio P. Tumamao and Mamerto A. Garma, departed for training at the Service School Command, Great Lakes, Illinois, on May 28, 1977, and December 30, 1977, and completed their training on November 16, 1977, and June 10, 1978, respectively. Mr. Tumamao was advanced a total of \$6,930 based upon the full per diem rate of \$35 per day. Upon processing of his travel voucher, on May 8, 1978, Mr. Tumamao was informed of the reduction in the per diem rate and that he had been overadvanced the sum of \$2,019.37. Mr. Garma was authorized an advance of \$6,680, also at the \$35 per diem rate. He actually withdrew a total of \$4,760. In late April 1978, while still in training, Mr. Garma was informed by telephone of the reduction in the rate of per diem. Upon processing his travel voucher, on July 14, 1978, he was informed of the overadvance of \$1,232.37.

Subsequent to submission of the original claims for Messrs. Tumamao and Garma, Shipyard officials reported to us the claims of four additional employees which arose out of similar circumstances. The four employees, Kenneth A. Grigsby, Milton M. Ikawa, John B. Mackinnon, and Malcom B. Shin were employed in the Nuclear Engineering Department at the Shipyard during the period the temporary duty in question was performed. They attended Shift Test Engineer Training at the Electric Boat Division, Groton, Connecticut. Their periods of temporary duty were as follows:

Kenneth A. Grigsby -- August 31, 1979, to January 29, 1980
Milton M. Ikawa -- September 14, 1979, to January 29, 1980
John B. MacKinnon -- September 7, 1979, to January 29, 1980
Malcom B. Shin -- September 7, 1979, to January 29, 1980

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The four employees were given initial travel advances by the Pearl Harbor Naval Shipyard based upon the \$35 per diem rate. Prior to receiving supplemental per diem beyond 120 days, they were notified by the Navy Finance Office, New London Subbase, that the \$35 rate of per diem would be reduced by 55 percent after 120 days. That interpretation was verified with the Shipyard's Nuclear Engineering Department at that time. However, after the four employees returned to the Shipyard, Pearl Harbor did not concur with that interpretation and processed the travel vouchers using the reduced per diem rate of \$20 for all days of temporary duty travel.

As to the lapse of time between the change to the JTR and the employees' travel, the Commander, PHNS, stated in his memorandum to this Office dated November 6, 1979, concerning the travel of Messrs. Garma and Tumamao, that administrative personnel were not aware of the change to the JTR and that its impact was only recognized upon the processing of the claim of one of the employees involved.

As to the four other employees, the Shipyard Commander reports in his memorandum to this Office of June 25, 1980, that the employees were misinformed by officials at the Shipyard and at the Navy Finance Office, New London, as to the applicable rate of per diem and therefore the employees did not have the opportunity to adjust their rate of expenditures down to the \$20 per day rate.

On the travel orders of each of the employees, the block opposite the statement, "Per diem authorized in accordance with JTR" was checked. Although no dollar amount was stated, the estimated total per diem (Garma - \$5,950) and the approximate number of days of temporary duty (Garma - 170 days) as stated on the travel orders indicates a per diem of \$35. Further, it was understood by Shipyard officials and the employees that the rate of per diem was \$35, the maximum authorized rate at that time.

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On June 21, 1976, prior to the travel involved here, the Per Diem, Travel, and Transportation Allowance Committee, the body authorized by the Secretary of Defense to issue and change the JTR, issued a telegraphic message entitled "Reduced Per Diem Rates for Long-Term Training." The message stated that, effective August 1, 1976, for training programs of 120 or more calendar days at one location, the new per diem rate would be 55 percent of the maximum rate authorized for regular areas or high-cost areas, as applicable.

The message was not received at the Pearl Harbor Naval Shipyard. We have been informally advised by officials of the Office of Civilian Personnel, Headquarters, Department of the Navy, that the distribution code used for dissemination of the telegraphic message of June 21, 1976, did not include the Pearl Harbor Naval Shipyard. Navy officials also advised that, during the period under consideration, problems were encountered in disseminating written materials to Navy civilian components located at military installations. A new distribution code is now being utilized to transmit documents to Navy civilian personnel offices.

On October 1, 1976, Change 132 to JTR, Volume 2, was issued by the Per Diem, Travel and Transportation Allowance Committee for the information and guidance of all Defense Department civilian personnel. The change was received by the Administrative Department of the Pearl Harbor Naval Shipyard during October 1976. The change was issued to the various departments of the Shipyard on November 1, 1976, and was received in the Nuclear Engineering Department on November 2, 1976.

Paragraph C4552-2i of Change 132 provided for a reduced per diem rate for long-term training programs of 55 percent of the maximum allowable per diem rate or 55 percent of the actual expense maximum, as applicable, for all locations within the continental United States, including designated high-cost areas. The effect of the change was to reduce regular per diem

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rates from \$35 or \$33, to approximately \$20. The reduced rate was specified to be effective August 1, 1976, consistent with advance notice dated June 21. In the Brief of Revision which accompanied the change, it was stated:

"Par. C4552-2i. Provides a reduced per diem rate for long-term training courses of 55% of the applicable per diem or actual expense maximum when the course is in a high cost area."

Messrs. Garma and Tumamao state that prior to their departure for training, no mention was made of the change in Volume 2, JTR, which required the reduction of per diem for long-term training in excess of 120 days. The two employees report that as required by regulation, they checked in at the nearest Bachelor Enlisted Quarters every three weeks to ascertain the availability of Government quarters. When informed that none were available, they continued to use civilian commercial quarters. Due to this requirement to continually report in, they contend that they were unable to make arrangements for more economical rental quarters on a long-term lease basis. Messrs. Garma and Tumamao state that the collection of the indebtedness owed the Government places an unfair and unreasonable burden on them and their families.

The other four employees also state that no mention was made of any reduction in per diem prior to their departure for long-term training. Further, the record shows that the Navy Finance Office, New London, paid them per diem at a rate of \$35 per day until they filed for supplemental per diem beyond 120 days. Messrs. Grigsby, Ikawa, MacKinnon, and Shin also report that their weekly rate of \$19 per day at the Thames Motel was significantly lower than its normal rates. They state that a local realtor in New London was contacted prior to their arrival to find suitable and inexpensive living quarters, and she recommended the Thames Motel. They conclude that it would have been

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difficult to find more economical living quarters reasonably close to the Electric Boat Division in Groton, Connecticut. The four employees feel that payment of the indebtedness places an unfair and unreasonable burden on them and their families.

The indebtedness which has been collected from each of the employees, based upon a maximum per diem of \$20, is as follows:

	<u>Indebtedness</u>
Apolonio P. Tumamao	\$2,019.37
Milton M. Ikawa	1,512.00
Malcom B. Shin	1,475.00
Mamerto A. Garma	1,232.37
John B. MacKinnon	912.67
Kenneth A. Grigsby	858.63

The Commander of the Pearl Harbor Naval Shipyard requests that the claims of the six employees be forwarded to the Congress by the Comptroller General of the United States under the provisions of the Meritorious Claims Act of 1928, 31 U.S.C. § 236.

Amendatory regulations changing per diem rates have the force and effect of law and are applicable from the stated effective date. The rule is applicable even if the individual employee has not received notice of the increase or decrease in rate. B-173927, October 27, 1971.

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In Carl W. Kaufman, B-182324, July 31, 1975, a decision similar to the case before us, an employee was issued a travel order on May 22, 1973, for approximately 298 days temporary duty at the Air War College, and was authorized per diem in accordance with the JTR. Thereafter, on August 9, 1973, the Per Diem, Travel, and Transportation Allowance Committee reduced the per diem from \$25 to \$14 for employees attending training courses at schools, colleges, and universities (including military schools) for periods of 45 days or more effective September 1, 1973. The formal "Change" in the JTR was issued November 1, 1973. The employee was paid at the \$25 per diem rate until October 31, 1973, before it was discovered that he should only have received the reduced \$14 per diem beginning September 1, 1973. His orders were amended on November 13, 1973, to reflect the JTR change, and recoupment of the overpayment was made by his agency. We held that there was no authority to pay a rate in excess of \$14 subsequent to September 1, 1973, since the Joint Determination of August 9, 1973, reducing per diem effective September 1, 1973, was consistent with the advance notice procedure authorized in 33 Comp. Gen. 505 (1954). See also Bruce Adams, 56 Comp. Gen. 425 (1977), and B-177417, February 12, 1973.

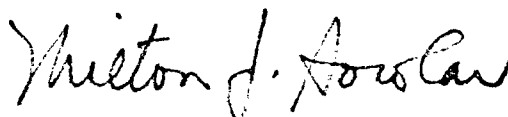
On a factual basis, the present case is analogous to a recent decision of this Office, Long Beach Naval Shipyard, B-190014, August 30, 1978. The one main difference is that the travel and performance of long-term temporary duty training by the six employees (May 1977 to January 1980) took place many months after the effective date (August 1, 1976) of the issuance of Change 132 to the Joint Travel Regulations. The payment of per diem at the \$35 rate to Messrs. Garma and Tumamao during the entire period of their training, and to the four other employees for 120 days, only serves to magnify the extent of the administrative error. However, such gross error does not alter our established rule that the advance notice and formal issuance of Change 132 to the JTR is deemed

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to give actual or constructive notice to persons whose rights might be affected. See Long Beach, supra, and Kaufman, supra. Hence we find no basis for the payment of per diem at the higher rate of \$35 per day for the long-term training assignments of the six employees herein involved, which occurred on or after August 1, 1976.

However, in view of the gross administrative failures in implementing the regulatory change in the per diem rate over an extended period of time, and the fact that the rate reduction was so substantial, and that the employees acted in good faith reliance on their travel orders and the representations of agency officials, we feel the equities in the instant case are such as to warrant our reporting this matter to the Congress pursuant to the Meritorious Claims Act, 31 U.S.C. § 236 (1976). Long Beach, supra, and James C. Wilkinson, B-189537, December 11, 1978.

Accordingly, we are forwarding a report to the Congress requesting consideration of the overpayments as Meritorious Claims.



Acting Comptroller General
of the United States



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

In Reply
Refer to: B-197134(BRP)

June 18, 1981

To the Congress of the United States:

Pursuant to the Act of April 10, 1928, 45 Stat. 413, 31 U.S.C. § 236 (1976), we submit the following report and recommendation on the claims of six employees of the Pearl Harbor Naval Shipyard, Department of the Navy, Pearl Harbor, Hawaii, who, while attending training schools for periods in excess of 120 days during the period May 1977 to January 1980, were paid per diem allowances in excess of that authorized by the Joint Travel Regulations (JTR). The amount that was determined to be owed the United States by each employee was collected from each of them. The basis for the collection action was that the per diem rate authorized for civilian employees by the JTR, Volume 2, was changed to a reduced rate of 55 percent for extended training of 120 days or more, effective August 1, 1976.

On each of the travel orders, the block opposite the statement, "Per diem authorized in accordance with JTR", was checked. No dollar amount was stated but the Shipyard and the employees both understood that the amount was the maximum authorized rate.

On June 21, 1976, the Per Diem, Travel, and Transportation Allowance Committee, the body authorized by the Secretary of Defense to issue and change the JTR, issued a telegraphic message which stated that, for training programs of 120 or more calendar days at one location, the new per diem rate would be 55 percent of the maximum rate authorized for regular areas or for high-cost areas, as applicable. The message stated that the JTR revision would be effective August 1, 1976. The telegraphic message was not received at the Pearl Harbor Naval Shipyard as the code used for dissemination of the message did not include Pearl Harbor.

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On October 1, 1976, Change 132 to JTR, Volume 2, was issued by the Per Diem Committee. The change was received by the Pearl Harbor Naval Shipyard during October 1976. As to two of the affected employees who received training at Great Lakes, Illinois, Shipyard officials did not become aware of the change until the final travel vouchers of the two employees were being processed. As to the four remaining employees who received training at Groton, Connecticut, the regulatory change was misinterpreted by officials at Pearl Harbor and at the training site as being applicable only after the first 120 days of training. As a result, Navy officials continued to pay per diem at the maximum allowable rate during the entire period of training to the two employees at Great Lakes, Illinois, and for 120 days for the four employees at Groton, Connecticut.

The six employees, in reliance upon the authorized rate payable under their official travel orders and upon the authority vested in officials at the Pearl Harbor Naval Shipyard and at their temporary duty sites, and without any actual notice of the reduction in the per diem rate, performed travel to their respective training posts, obtained economical lodging quarters, and purchased food and other required necessities while living away from their homes for extended periods of time. The full details surrounding the claims are set forth in our decision of this date, B-197134, and a copy of that decision is attached hereto and incorporated herein by reference.

As we have stated in our decision, the advance notice by telegraphic message accomplished the revision of the JTR consistent with the procedure established in one of our prior decisions, 33 Comp. Gen. 505 (1954). Such notice is deemed to constitute actual or constructive notice to persons whose rights might be affected favorably or adversely. Therefore, on or after August 1, 1976, there is no basis for payment of per diem to the six affected employees at the higher rate. See Long Beach Naval Shipyard, B-190014, August 30, 1978, copy attached, a decision of this Office involving similar claims which

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we reported to the Congress pursuant to the Meritorious Claims Act and which were enacted into law by the Congress as Private Law 96-17, October 23, 1979.

In summary, we find no basis within our authority to grant the relief sought by the six claimants. However, we are of the opinion that these claims contain such elements of equity as to be deserving of the consideration of the Congress as Meritorious Claims. The overpayments resulted from administrative failures in implementing the regulatory change in the per diem rate over an extended period of time, the rate reduction was substantial, and the employees acted in good faith without knowledge of the rate reduction.

In determining the correct amount of money that should be refunded to each of the six employees, we point out that Shipyard officials determined the amounts that were owed, based upon a per diem rate of \$20, and have already collected the full amount of the indebtedness owed by each employee. Since the travel orders issued to the six employees were based on a per diem of \$35 and travel advances based on the \$35 rate were in fact paid to each of the employees, we are of the opinion that the amounts to be refunded to the six claimants should be based upon a per diem rate of \$35. In accordance with computations furnished this Office by authorities at the Pearl Harbor Navy Shipyard, based upon the employees' actual lodging costs plus \$16 a day for meals and miscellaneous expenses, not to exceed \$35 a day, each employee is entitled to the amount stated in the draft bill below which takes into consideration advance payments and includes per diem and other reimbursable expenses.

Provided the Congress concurs in our recommendation on these claims, it is our opinion that enactment of a statute in substantially the following language will accomplish the relief recommended:

"Be it enacted by the Senate and the House of Representatives of the United States in Congress assembled, That each of the following-named persons is relieved of any indebtedness to the United States for overpayment of per diem and is entitled to reimbursement of the following sum:

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	<u>Total Amount Due</u>
Apolonio P. Tumamao -	\$ 1,137.50
Milton M. Ikawa -	2,032.50
Malcom B. Shin -	2,032.50
Mamerto A. Garma -	1,938.00
John B. MacKinnon -	2,028.75
Kenneth A. Grigsby -	2,032.50

The stated amounts are due as reimbursement for travel expenses incurred by the six above-named civilian employees of the Pearl Harbor Naval Shipyard, Department of the Navy, in reliance on their official travel orders and the advice and instructions of authorized officials of the Navy. The overpayments arose in connection with long-term temporary duty training assignments during the period May 1977 to January 1980. The amounts due resulted from the failure of officials of the Government to timely implement a regulatory reduction in the rate of per diem applicable to the training assignments performed by the employees. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, credit shall be given for amounts for which payments are made by this Act."

MILTON J. SOCOLAR

Acting Comptroller General
of the United States