

DECISION



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

FILE: B-197386

DATE: June 15, 1983

MATTER OF: Gene Daly - Claims for Reimbursement of
Travel Expenses

DIGEST:

1. Employee appeals Claims Group denial of travel claims and seeks investigation of his claim. Our procedures for claims settlement in 4 C.F.R. Part 31 do not provide for investigations, interviews of witnesses, or adversary hearings. Claims are decided on basis of written record, and burden of proof is on the claimant. 4 C.F.R. § 31.7.
2. DOE employee seeks reimbursement for two trips to Denver, Colorado, on temporary duty which agency denied on the basis that the travel was unauthorized. Where first trip was supported by employee's blanket travel authorization and statements from other employees justifying need for trip, that travel may be reimbursed. Absent such evidence supporting second trip, that claim is denied.
3. DOE employee claims agency was arbitrary and capricious in denying certain meal costs incurred during temporary duty travel. Our decisions require that employees act prudently in incurring expenses, and where the agency determines what constitutes reasonable expenses for meals, we will not substitute our judgment unless the agency has been arbitrary, capricious, or clearly erroneous. The agency's action in this case was consistent with our decisions and has not been proved to be arbitrary or capricious.

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4. DOE employee who used travel trailer for temporary duty failed to justify additional expenses after DOE amended per diem for use of travel trailers to \$23 for meals and miscellaneous and \$15 for "incidental expenses" such as space rental, utilities, etc. We do not find the DOE policy unreasonable and we cannot agree with the employee that he is entitled to a flat per diem.
5. DOE employee claims mileage at temporary duty station in order to obtain meals. Federal Travel Regulations reimburse such travel only when temporary duty assignment is such that suitable meals cannot be obtained. Based on information before us, we concur with agency determination to deny such expenses.
6. DOE employee claims weekend return travel reimbursement based on maximum per diem rate rather than lesser amounts allowed for use of travel trailer during the week at the temporary duty station. Our decisions support agency's determination to look to average amounts allowed in the week preceding return travel. Employee has not proved agency acted inconsistently in handling claims of other employees.

The issues in this decision involve an employee's entitlement to reimbursement for various travel expenses incurred during numerous temporary duty assignments over a 3-year period. The claims are grouped by categories and are discussed separately.

This decision is in response to the appeal by Mr. Gene Daly, an employee of the Department of Energy (DOE), from our Claims Group settlement Z-2827189, dated November 20, 1981, denying his claim for various travel expenses.

CLAIMS SETTLEMENT PROCEDURES

Mr. Daly expressed disappointment that our Office did not investigate his claim by comparing his travel vouchers with those of other DOE employees. However, our claims procedures as set forth in 4 C.F.R. Part 31 (1982), do not provide for investigations, interviews of witnesses, or adversary hearings. Instead, we consider claims on the basis of the written record only, and the burden of proof is on the claimant to establish the liability of the United States and the claimant's right to payment. 4 C.F.R. § 31.7; Barbara S. McCoy, B-196686, January 17, 1980.

UNAUTHORIZED TRAVEL

Mr. Daly claimed reimbursement for two trips to Denver, Colorado, one performed on July 4-6, 1979, and the other performed on February 6 and 7, 1981, but reimbursement was denied by the DOE approving officials, Mr. Daly's supervisors, on the grounds that neither trip was authorized nor approved in advance. The 1979 trip to Denver was disallowed because Mr. Daly was told by his supervisor not to arrange a meeting without his express approval. The 1981 trip to Denver was similarly disallowed since he was told by the Audit Director not to meet with a junior auditor until Monday, February 9, 1981. Our Claims Group noted that the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR), provide that all travel shall be authorized or approved by an appropriate official of the agency, ordinarily prior to incurrence of the expense. FTR para. 1-1.4.

On appeal, Mr. Daly argues that both trips were authorized in writing and that he performed Government business during these temporary duty assignments without any reduction in his salary. With regard to the 1979 trip we note that Mr. Daly had been given a blanket travel authorization for the month of July 1979 for travel between Salt Lake City, Denver, and Casper. We also note that Mr. Daly has provided copies of letters from two DOE officials who met with him on that trip attesting to the necessity for the meeting. One of the letters states that Mr. Daly's travel was informally approved by the Manager, Rocky Mountain District, DOE. On the basis of this evidence, we conclude that Mr. Daly had sufficient authorization for the 1979 trip despite the fact that the trip was not approved in advance by his immediate supervisor who was away on leave at the time of this trip. Therefore, Mr. Daly may be reimbursed for his travel expenses for this trip, if otherwise payable.

With regard to the 1981 trip, we do not have before us similar evidence to support Mr. Daly's claim. The Federal Travel Regulations provide in para. 1-1.4 that all travel shall be authorized or approved by an appropriate agency official, normally prior to incurrence of the expenses. Our decisions have held that written travel order procedures assist in the controlling of Federal funds and in meeting the requirements of recording obligations at the time they are incurred. See Robert Gray, B-203820, October 19, 1981. Where travel orders have not been prepared in advance and where the agency refuses to authorize or approve the travel after-the-fact, we find no basis in the absence of other evidence to approve reimbursement for the travel.

EXCESSIVE MEAL COSTS

For the period from July 1979 to March 1981, DOE has limited Mr. Daly's claims for meals on the basis that the amounts claimed were unreasonable and imprudent. Mr. Daly's supervisor began to suspend individual meal claims which he believed to be excessive considering the location of Mr. Daly's travel, the availability and cost of restaurant meals, and amounts claimed by other travelers. Eventually, Mr. Daly was held to a ceiling of \$23 for meals and miscellaneous expenses, a limitation which was formally announced by DOE memorandum dated March 23, 1981, establishing a guide for what constitutes reasonable expenses for meals.

Mr. Daly argues that this limitation was retroactively applied to his travel vouchers and that the limitation was applied in an arbitrary and capricious manner.

Our decisions have held that employees are not entitled to be reimbursed for meals up to the maximum rate where their lodging costs are reduced. We have held that employees may be reimbursed only for reasonable expenses for meals since travelers on official business are required to act prudently in incurring expenses. Charles J. Frisch, B-186740, March 15, 1977; and Norma J. Kephart, B-186078, October 12, 1976. The employing agency must first determine what constitutes reasonable expenses for meals in each case and, where it has exercised that responsibility, we will not substitute our judgment for that of the agency unless the agency's determination is clearly erroneous, arbitrary, or capricious. Harry G. Bayne, B-201554, October 8, 1981, 61 Comp. Gen. 13.

We suggested in Kephart that agencies should issue written guidelines under the authority of FTR para. 1-8.3b to serve as a basis for review of an employee's expenses and to provide advance guidance to employees who are able to obtain lodgings at substantial savings. For example, in Bayne we considered a DOE policy issued March 27, 1980, limiting employees who stay with friends or relatives to 46 percent of the subsistence rate (for \$50 per day the amount would be \$23 for meals and miscellaneous expenses).

In line with our prior decisions, we do not believe that the limitation of \$23 per day for meals and miscellaneous expenses was erroneous, arbitrary, or capricious. See Motter and Huskey, B-197621 and B-197622, February 26, 1981. The decision of the agency to limit reimbursement prior to issuance of an agency-wide policy on meals and miscellaneous expenses has also been sustained by our Office. See R. Edward Palmer, B-203762, December 15, 1982, 62 Comp. Gen. ____; Frisch; and Kephart.

The remaining question is whether the DOE policy has been applied to Mr. Daly in an arbitrary or capricious manner. Mr. Daly has submitted copies of travel vouchers from other DOE employees as examples that the policy was not applied uniformly to all DOE employees. We are not persuaded by the evidence submitted by Mr. Daly that his vouchers have been handled in an arbitrary or capricious manner. In most instances where other DOE employees claimed meal expenses in excess of \$23 per day, they also exceeded the applicable maximum rate for subsistence, and after subtracting their lodging costs from the maximum rate, their net reimbursement for meals was within the \$23 figure.

Finally, it is not clear from the many documents in the record before us whether Mr. Daly has been limited to \$23 per day for meals and miscellaneous expenses or whether certain meals have been excluded because they have been determined to be "excessive". We believe it is appropriate for DOE to limit Mr. Daly's claims to \$23 per day but not to totally exclude individual meals which are deemed to be excessive and thereby reduce his reimbursement further. To the extent such meals have been excluded, we find that DOE should allow reimbursement up to the \$23 limit.

TRAVEL TRAILER

It appears that for some temporary duty assignments, Mr. Daly used a travel trailer instead of lodgings in a

motel. Based on a memorandum from the Federal Energy Administration (a predecessor agency to DOE) dated March 31, 1977, Mr. Daly claimed a per diem rate of \$22 per day in lieu of actual subsistence expenses. On October 30, 1980, the manager of the Rocky Mountain District of DOE advised all employees that the per diem for travel trailers would be \$38 per day "which allows \$23 for meals and \$15 for other incidental expenses such as trailer park rental, electricity, propane, hookups, etc." Then on February 20, 1981, the October memo was clarified to state that the \$15 allowance for incidental expenses has to be "cost justified" and mileage would be limited to the mileage to the nearest facility.

Mr. Daly's claims from November 1980 to January 1981 for per diem while using his travel trailer were denied since he had not supported or justified his incidental expenses. On appeal Mr. Daly argues that per diem is a daily flat rate and that other DOE employees were not required to justify their expenses which is arbitrary and capricious treatment. He further argues that he saved the Government money by using a travel trailer instead of motel lodgings and that the February memo "clarifying" the October memo constituted a retroactive change in per diem which is not permitted by the Federal Travel Regulations.

Under the provisions of FTR para. 1-7.6b, per diem may be allowed when the traveler uses a travel trailer or camping vehicle while on temporary duty. In addition, where the lodgings-plus method of per diem computation is not appropriate, the agency may establish a specific per diem rate. FTR para. 1-7.3c(3). This was done by the Federal Energy Administration in 1977 in establishing a flat rate of \$22.

In October 1980, DOE revised the per diem for using travel trailers, perhaps to reflect the new meals and miscellaneous rate of \$23 as established under FTR para. 1-7.3c(1) effective October 5, 1980. FTR Supp. 11, October 1, 1980. We do not think it unreasonable for DOE to require justification for the remaining \$15 under these circumstances. For example, if an employee traveling on per diem uses commercial lodgings, he is required to list the amount charged for lodgings (receipts required at agency discretion), and there is no minimum allowance authorized for lodgings. FTR para. 1-7.3c(2). See Doyt Y. Bolling, B-195638, September 14, 1979. Thus, we cannot agree with Mr. Daly's contention that he is entitled to a flat per diem reimbursement for using his travel trailer.

Finally, we do concur with Mr. Daly's statement that our Claims Group was in error in referring to Salt Lake City as the location of a lot owned by Mr. Daly's parents and used by Mr. Daly for his travel trailer. It appears that the reference should have been to Cody, Wyoming.

TRAVEL FOR MEALS

Mr. Daly claimed reimbursement for mileage expenses incurred while at his temporary duty station in order to obtain meals. It appears that for the Labor Day weekend in 1979 while on temporary duty in Cody, Wyoming, Mr. Daly claimed mileage in the amount of \$16.10 to purchase groceries. The agency denied his claim on the basis that Mr. Daly could have purchased the groceries the previous day upon returning from his official duties. On appeal Mr. Daly argues that he saved the Government money since the cost of travel to nearby restaurants in Cody would have exceeded his claim.

Under the provisions of FTR para. 1-2.3b, employees may be reimbursed the expense of daily travel to obtain meals where the nature and location of the work at the temporary duty station are such that suitable meals cannot be obtained there. Our decisions have held that where lodgings are available within walking distance of restaurants and where restaurants offer meals adequate to the needs of most employees, we will not allow travel expenses for employees who, for reasons of personal preference, obtain lodgings or meals in distant locations. See Reuben Yudkowsky, B-202411, December 1, 1981; and Hebert and Brindle, B-190657, May 19, 1978. Based on the information before us, we concur with the agency's determination that the claim is not allowable as a necessary expense of travel since the Saturday trip was for reason of personal preference.

WEEKEND RETURN TRAVEL

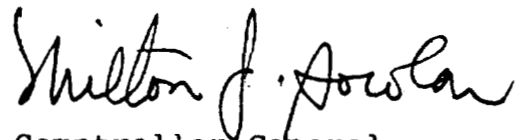
The final claim by Mr. Daily concerns the agency's computation of his weekend return travel reimbursement. The Federal Travel Regulations provide in para. 1-7.5c that where an employee voluntarily returns to his official station or residence on nonworkdays (typically weekends) the reimbursement allowable for transportation and per diem en route may not exceed the per diem and travel expense "which would have been allowable had the traveler remained at the temporary duty station."

It appears that DOE limited Mr. Daly's reimbursement to the amounts allowed to him while on temporary duty (\$22 for travel trailer) instead of the full per diem (\$35) which would have been allowable. Mr. Daly argues that based on a comparison with the vouchers of other employees, DOE has been inconsistent in computing the per diem "which would have been allowable."

Our decisions concerning weekend return travel and the per diem "which would have been allowable" have held that agencies may look to the average amounts claimed for full days in the week preceding the return travel to determine the constructive per diem costs. Howard E. Johnson, 59 Comp. Gen. 293 (1980); Internal Revenue Service, B-194791, March 10, 1980. In the IRS decision we offered no objection to an agency proposal to use commercial lodging costs to determine the constructive per diem in those cases where the employee stayed with friends or relatives while on temporary duty at no cost to the Government.

In the present case, Mr. Daly argues that DOE has been inconsistent in computing the constructive per diem of its employees, but the record before us does not indicate that DOE has been arbitrary or capricious. The policy of DOE to limit reimbursement for weekend return travel to a constructive per diem based on actual amounts allowed appears consistent with our decisions. Therefore, we find no basis to allow Mr. Daly's claims for additional reimbursement for weekend return travel.

Accordingly, we sustain in part and reverse in part our Claims Group settlement of Mr. Daly's claims. The Department of Energy should review Mr. Daly's vouchers and allow those claims which we have determined should be paid.



Acting Comptroller General
of the United States