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DECISION



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

FILE: B-199432

DATE: June 16, 1981

MATTER OF: Talmon R. Perkins - Per diem - Delayed travel

DIGEST: Employee worked on last day of temporary duty until 3:45 p.m. and delayed return to headquarters until following morning by privately owned vehicle authorized for his convenience. Constructive per diem and travel time by commercial air may cover overnight layover. Delayed flight would have been reasonable, since last workday was relatively long and flight would not have arrived at headquarters until 9:34 p.m., well beyond normal duty hours. Also, employee's presence at work was not required the first thing the following morning. Per diem and travel time for leave purposes are limited to that for constructive air travel.

In this decision, we decide that Mr. Talmon R. Perkins may, for the purpose of computing expenses for travel by privately owned vehicle (POV) at his personal convenience, have constructive per diem costs and travel time by commercial air cover an overnight layover before his return to headquarters.

Mr. Perkins' permanent duty station was Albany, Georgia, where he was employed at the Marine Corps Logistics Base. He was assigned temporary duty between July 30 and August 1, 1979, at Lexington, Kentucky. He completed his temporary duty in Lexington at 3:45 p.m., August 1, 1979. Rather than return home on that date, he remained in Lexington overnight and departed for Albany the following morning, August 2, at 7:30 a.m., by POV. His travel authorization permitted POV transportation for his personal convenience with reimbursement not to exceed the constructive cost of common carrier transportation, including per diem by that method of travel.

Initially it was determined that Mr. Perkins could have used common carrier transportation by commercial air leaving Lexington at 6:30 p.m., August 1, since he

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had finished official duty in time to reach the airport for the flight. Had he done so he would have arrived in Albany at 9:34 p.m., August 1. Since Mr. Perkins' authorized travel time and reimbursement by POV were limited to constructive transportation by common carrier and he reasonably could have arrived in Albany the evening of August 1, the disbursing officer initially disallowed per diem for August 2, and advised that Mr. Perkins should be charged 8 hours of annual leave for that date. However, the Commanding General of the Marine Corps Logistics Base tentatively decided in favor of Mr. Perkins by granting him per diem for constructive travel time by air on August 2, and charging annual leave only for absence exceeding that time. Because the applicable regulations can be subject to differing interpretations, the Commanding General requested our decision.

The principal regulation relevant to the issue is para. C4464 of the Joint Travel Regulations (JTR), Volume 2. Subparagraph 1 of this provision states that the traveler on official business:

*** will exercise the same care in incurring expenses and accomplishing a mission that a prudent person would exercise in traveling on personal business."

Subparagraph 2a provides, in pertinent part:

"The assignment conditions in a travel order establish the time of beginning and completion of travel status. Normally, an employee on official travel will not be required to travel during unreasonable hours at night. ***

"An employee will not be expected to use a carrier, the schedule of which requires boarding or leaving between 2400 hours and 0600 hours, if there are more reasonable departure or arrival schedules that will meet mission requirements."

Finally, Subparagraph 2b, among other things, states:

"It is not unreasonable for an employee to:

* * * * *

- "2. depart from a temporary duty station the morning following completion of a temporary duty assignment to prevent travel during off-duty hours when he is not required to be at his permanent duty station the first thing in the morning."

In 51 Comp. Gen. 364 (1971) we held that substantially identical regulations, then in para. C1051 of the JTR, were only guidelines for determining whether in a particular situation the traveler acted in a reasonable manner. In that case, the employee's last workday at the temporary duty location was relatively long, ending at 4 p.m. Scheduled departure time for the air flight that day to headquarters was 6:30 p.m., and arrival there would have been at 8:36 p.m. Travel time to and from the airports would have been another 2 hours. We allowed additional per diem for the overnight stay and return home the next morning, since the facts showed that the employee's delayed return was reasonable.

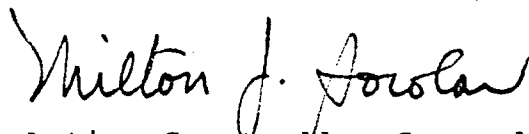
For the purpose of constructive travel, Mr. Perkins' situation was comparable to that in 51 Comp. Gen. 364, in view of his relatively long workday ending at 3:45 p.m., August 1, 1979, and the scheduled arrival of the 3-hour flight in Albany at 9:34 p.m. that day. Flight time, plus trips to and from airports, would have required travel extending well beyond normal duty hours. Therefore, a layover in Lexington and commercial flight the following morning would have been reasonable.

Concerning POV travel for Mr. Perkins' personal convenience, para. C4661-2a of the JTR provides that total allowable cost is limited to the "total constructive cost of appropriate common carrier transportation including constructive per diem by that method of transportation."

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In constructing per diem cost by common carrier transportation, we have also weighed the reasonableness of delaying travel until the morning after the final temporary duty workday. See B-168855, March 24, 1970. We further note that the administrative report states that Mr. Perkins was not required to be at his permanent duty station the first thing on the morning of August 2. Since his delay of travel was reasonable, constructive per diem and travel time by commercial air may be based on the flight leaving on August 2. Further, we would have no objection to allowing the constructive travel time without charge to annual leave. B-168855, supra.

The decision request also asks whether travel orders should authorize layovers until the morning after completing temporary duty and whether this decision may be used as a precedent for future decisions. In some instances it may be helpful to expressly authorize such layovers meeting the guidelines of the applicable regulations and Comptroller General decisions; however, there is no legal necessity to do so. This decision and those cited above may be used as precedents to the extent they explain the applicable regulations and provide standards for determining whether the employee's layover was reasonable under the circumstances. Compare Laxman S. Sundae, B-185652, December 28, 1976; and Jess D. Todd, B-190163, February 13, 1978, where layover expenses were disallowed because the employee was not required to work late on the final day of temporary duty, and had discretion to choose his departure time on that day.



Acting Comptroller General
of the United States