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DECISION



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

FILE: B-200794

DATE: July 23, 1981

MATTER OF: Johnny S. Taylor, Jr. - Per diem rate
during temporary duty

DIGEST: Per diem which is provided at a reduced rate for Department of Defense employees traveling overseas where they have meals available at lower than commercial prices is not contrary to law and is not an additional allowance prohibited by 5 U.S.C. 5536. Instead it is travel per diem authorized by law, 5 U.S.C. 5702 and 5707. Therefore, an employee who claims per diem at a higher rate on the basis the lower rate is unauthorized may not have his claim allowed.

This action is the result of an appeal from the settlement of our Claims Group dated September 9, 1980, which denied Mr. Johnny S. Taylor, Jr.'s claim for reimbursement of travel expenses as a civilian employee of the U.S. Army Corps of Engineers while in Saudi Arabia on temporary duty during March and April 1980. Mr. Taylor's claim is for per diem in excess of the per diem prescribed in footnote 13, Appendix A, Volume 2, Joint Travel Regulations (JTR). Mr. Taylor contends that footnote 13 amounts to a subsistence allowance because it in effect requires him to eat his meals at particular, non-commercial facilities, and he contends that this subsistence allowance is prohibited by 5 U.S.C. 5536 (1976). Section 5536 prohibits members of the uniformed services and civilian employees from receiving additional pay or allowances, such as subsistence payments, unless they are specifically authorized by law. 42 Comp. Gen. 149 (1962). On the basis that the reduced per diem is, therefore, unauthorized Mr. Taylor claims the full per diem found elsewhere in Appendix A.

The issue in this case is whether 5 U.S.C. 5536 prohibits the application of the per diem prescribed in footnote 13. We agree with our Claims Group that it does not and that Mr. Taylor was properly limited to the per diem prescribed in footnote 13 while traveling in Saudi Arabia.

The per diem rate found in footnote 13, Appendix A, 2 JTR, is much lower than the normal per diem rate for Saudi Arabia found elsewhere in Appendix A because it is predicated upon Government quarters and meals being available to the traveler incident to his official assignment through

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noncommercial facilities at costs far below those prevailing commercially. Mr. Taylor apparently used Government quarters which were available and does not object to the reduction of his per diem below the per diem rate for Saudi Arabia found elsewhere in Appendix A based on such use. However, Mr. Taylor's travel voucher shows that he ate a considerable number of his meals at commercial restaurants, even though the less expensive facilities were generally available where he ate only some of his meals. Since the per diem prescribed in footnote 13 is predicated on the less expensive non-commercial facilities, it will not cover the costs of eating at those more expensive commercial restaurants.

Section 5536 of title 5, United States Code, although generally prohibiting additional compensation, does not prohibit additional pay or allowances which are, in the terms of the statute, "specifically authorized by law." The per diem allowances listed in Appendix A, including the reduced allowances provided by footnote 13, are prescribed under Federal Travel Regulations (FPMR 101-7) para. 1-7.2c (May 1973) pursuant to the specific statutory authority for prescribing per diem and issuing implementing regulations found in 5 U.S.C. 5702 and 5707 (1976). Accordingly, those per diem rates are authorized by law.

While in 42 Comp. Gen. 149, to which Mr. Taylor refers, it was held that reimbursement to employees for meals consumed at their permanent duty station when they were not in a travel status was prohibited by 5 U.S.C. 5536, the basis for that holding was that such payments were not authorized by law. Since Mr. Taylor was in a travel status while in Saudi Arabia on temporary duty, he was entitled to the per diem prescribed pursuant to law for his situation and, as is indicated above, the prohibition does not apply to his case.

As to the propriety of prescribing a reduced per diem, an agency has discretion to provide reduced per diem and, in situations such as when meals or lodging are furnished at reduced cost, agencies are directed to prescribe reduced per diem. See Federal Travel Regulations (FPMR 101-7) para. 1-7.3a (May 1973) and 35 Comp. Gen. 554 (1956). See also, Barbara J. Prootts, B-195658, March 19, 1980, a case where the Forest Service ordered civilian employees on temporary

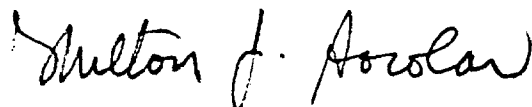
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duty and authorized them no per diem for subsistence. We stated in that case that--

"* * * Where an employee incurs no additional expenses the agency may and should properly refuse to authorize any per diem. B-177419, March 8, 1973. We find no basis to question the Forest Service's determination that since subsistence was furnished by the Government at the river basin camps no per diem should be authorized. The fact that the camps did not have shower or laundry facilities does not provide a basis to overturn that determination since subsistence expenses are intended to cover additional expenses incurred as the result of an employee's temporary duty assignment and not to compensate an individual for inconveniences that may be occasioned by the travel. * * *"

Mr. Taylor makes several additional observations about footnote 13, but these concern Department of Defense policies rather than the legal sufficiency of footnote 13. Since we have found that the per diem provided under footnote 13 is authorized by law and within the agency's discretion, we do not find it necessary to comment on those policies.

Accordingly, the disallowance of Mr. Taylor's claim is sustained.



Acting Comptroller General
of the United States