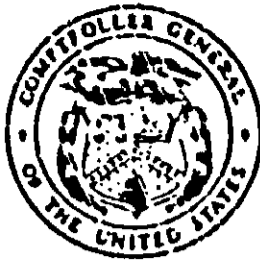


**DECISION**

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

*Mr. Cool*  
*Pym I*  
*118745*

FILE: B-202695

DATE: June 17, 1982

MATTER OF: Manuel Nunez - Claim for per diem

**DIGEST:** Reasonable suspicion of fraud which would support denial of claim or recoupment action in case of paid voucher depends on facts of each case. Fraud must be proved by evidence sufficient to overcome existing presumption in favor of honesty and fair dealing. Where employee provides receipts for 2 of 2-1/2 months of his lodging claim at \$65 a month and receipts were not required at time travel was performed, it is reasonable to assume employee did incur \$32.50 lodging cost for remaining 1/2 month of lodging and absence of such receipt in these circumstances does not evidence fraud.

Wylie O. Tindle, Chief, Freight and Travel Office, Directorate of Settlement and Adjudication, Headquarters Air Force Accounting and Finance Center, requests a decision as to the entitlement of Mr. Manuel Nunez to reimbursement for expenditures claimed on a temporary duty travel voucher which the agency suspects is fraudulent in misrepresenting lodging costs.

Mr. Nunez's claim was originally forwarded from the Air Force to our Claims Group because lodging costs claimed did not correspond with lodging expenses determined by the Air Force Office of Special Investigations (OSI). In its disposition letter dated November 17, 1980, our Claims Group stated that, in Mr. Nunez' case, while his actions in filing a partial settlement voucher may have been egregious, the OSI report was not included with the file and, based on the record as presented, it could find no clear inference of fraud. Our Claims Group thus approved specified payments on Mr. Nunez's voucher.

The Air Force has requested review and reconsideration of Mr. Nunez's claim reasserting that he knowingly and willfully misrepresented his travel claims. In support of this

contention, the Air Force has augmented the administrative record by providing the OSI report compiled in his case. We conclude that, although the comprehensive administrative report before us shows certain of Mr. Nunez's actions in filing his partial settlement voucher to be egregious, given the circumstances of this case the inference of dishonesty will be drawn in his favor. Moreover Mr. Nunez's final settlement voucher does not appear fraudulent. Payment may be made in accordance with the following analysis.

#### BACKGROUND

Mr. Nunez states his case in an undated letter appearing in the record as follows:

"In response to special orders putting me on TDY at Castle Airforce Base for approximately sixty days commencing the 16th of December, 1974, I traveled to Merced, California, on the 16th of December, 1974. I remained at the Six Motel in Merced on the 16th, 17th, 18th and 19th of December, at \$7.50 per night. I returned to Sacramento for the Christmas holidays on the 21st of December and returned to the Merced area on the 2nd of January, 1975, and remained at the Six Motel on the 2nd of January.

"Because I had learned that the TDY would extend probably longer than sixty days, I took my travel trailer and located at the Rancho Grande Mobil Home Park in Atwater, California. The rate of rental at the Rancho Grande Mobil Home Park was \$65.00 per month. I paid \$65.00 for the month of January, \$65.00 for the month of February and \$32.50 for the month of March. [The] statement from the manager of the Rancho Grande Mobil Home Park in Atwater that I only paid \$65.00 a month for one month is in error in that I spent two and one-half months at the Rancho Grande Mobile Home Park.

"In addition to the \$65.00 per month payable to the Rancho Grande Mobil Home Park, I incurred additional expenses: I charged the

government \$5.00 per week for the depreciation and the butane which I used to heat the mobil home, and a miscellaneous charge of approximately \$75.00 represented by additional cleaning and laundry bills which I would not have accrued had I not been in TDY. Plus \$13.00 for some toilet articles. The total of these items came to \$338.00 and I was careful when I made my claim to put the word 'approximately' because I know that these charges are not precise but I made them in accordance with what I understood was allowable under the Federal Almanac.

"Following is a compilation of those charges:

"Six Motel - Five nights at \$7.50	\$ 37.50
"Rancho Grande Mobil Home Park	
"January 4th to March 15th at \$65.00/mo	162.50
"Use of Trailer and Butane	50.00
"Misc. Expenses, Laundry etc.	75.00
"Misc. Toilet Articles	<u>13.00</u>
"Total Expenses	\$338.00

"On the 30th of January, 1975, I made an interim claim for TDY payments. On my voucher, I claimed \$13.00 per day which is the maximum for the period from the 16th of January, 1975, to the 29th of January, 1975, I saw no problem with this in view of the fact that I had done it many times before. In view of the uncertainties concerning TDY, I, and I understand most people, make claims on an interim basis and adjust the matter at the termination of the TDY on the final claim. I have been on TDY many times because of my employment, sometimes at the end of the TDY, it turns out that the government owes me additional money for my TDY expenses. There have also been times when I have

overdrawn during the period of TDY and it has been necessary for me to repay the amount of the overdraft. I have never had difficulty before, arising out of this and did not expect it this time."

The Air Force reports that Mr. Nunez originally submitted a voucher to which the Air Force took exception. Since, however, the Air Force did not retain this voucher but returned it to Mr. Nunez for correction, we do not have before us the question of the propriety of that voucher. Rather the dispute here involves the above claimed itemized expenses and the partial voucher.

Mr. Nunez's preliminary claim at or near the maximum daily amount for lodgings, coupled with the absence of verifying documentation, prompted concern on the part of the responsible Government fiscal officials. Investigators assigned to investigate Mr. Nunez's claim received statements from the manager of the Rancho Grande Mobile Home Park that Mr. Nunez had paid a total of \$65 during the period of the questioned claim. Acting upon their perception of the "reasonable suspicion of fraud" in Mr. Nunez's claim, the Air Force suspended payment of the \$1525 total on the temporary duty claim voucher, and proceeded to seek recoupment of sums already paid out on the interim voucher to Mr. Nunez.

Subsequently, counsel for Mr. Nunez obtained from the manager of the Rancho Grande Mobile Home Park a "revised" receipt for \$130 for the period of the claim. Mr. Nunez continues to maintain that the \$130 amount covers his actual expenditures at \$65 per month for January and February of 1975, but does not include an additional \$32 cash payment he made covering 2 weeks in March 1975. Thus, while the manager in question is no longer available, Mr. Nunez argues that he obviously had to stay somewhere between January 2 and March 15, 1975, and his claim for a total expenditure of \$162 for 2-1/2 months is supported.

#### ANALYSIS AND CONCLUSION

During the period of Mr. Nunez's temporary duty from December 1974 through March 1975, controlling travel regulations set out in paragraph C-8101 (change 3, May 1, 1974),

Volume 2, Joint Travel Regulations, stated that receipts for lodging costs would not normally be required, but may be required in individual cases. The record shows, and the Air Force does not challenge that rental space for a trailer at the Rancho Grande Mobile Home Park was \$65 a month. Since Mr. Nunez did produce receipts for 2 of the 2-1/2 months he says he stayed at the Park, it would appear reasonable to assume he did stay at the Park 2-1/2 months until his temporary duty ended in March despite the fact he cannot obtain a receipt for the last 1/2 month from the now unavailable former manager. Thus, as our Claims Group concluded, since in this case the circumstances are as consistent with honesty and good faith as with dishonesty, the inference of honesty will be drawn. See B-187975 July 28, 1977.

Accordingly, Mr. Nunez's claim may be approved for payment on the basis of \$37.50 hotel lodging and \$162.50 for the mobile home park costs. Other subsistence expenses which relate to these permissible days of lodging may also be paid if otherwise proper. Depreciation for the trailer may not be paid. Butane costs may be reimbursed to the extent that they may be separately identified as an additional expense. See Jerry G. Witherspoon, B-189392, August 23, 1977. Reimbursement for laundry expenses are not contemplated as lodgings expenses; and toiletry items, as personal furnishings, are similarly precluded for itemized reimbursement. See 35 Comp. Gen. 361 (1955). The fact, however, that Mr. Nunez claimed items which are not reimbursable under the regulations, does not mean that he filed a fraudulent claim. As far as Mr. Nunez's partial settlement voucher is concerned, we agree with our Claims Group that while his action was egregious we cannot say, under the circumstances of this case, that there is a clear inference of fraud.

The claim may be settled in accordance with this decision, and funds erroneously collected from Mr. Nunez by recoupment should be refunded to him.

*for* *Henry P. Van Cleave*  
Comptroller General  
of the United States