DECISION

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

FILE: B-202856

DATE: March 2, 1982

MATTER OF: Lewis E. Musolf - Actual Subsistence Expenses During Delay

DIGEST: Employee of Department of State delayed his travel for 11 days while waiting for his automobile to arrive from Europe to use it for traveling on home leave in connection with his transfer to the United States. He may not be paid actual subsistence expenses for period of delay since use of the automobile was not authorized as advantageous to the Government.

Mr. Lewis E. Musolf, an employee of the Department of State, appeals from a settlement of our Claims Group dated March 20, 1981, which denied his claim for additional subsistence expenses for the 11-day period he waited for his automobile to be released to him after shipment from his last duty station overseas. Mr. Musolf waited so he could use the automobile in traveling on home leave prior to reporting to his new station, Washington, D.C. Since the use of Mr. Musolf's automobile was not authorized as advantageous to the Government, additional subsistence expenses may not be paid for the period of delay.

The orders issued in connection with Mr. Musolf's transfer and home leave authorized transportation of his privately owned vehicle at Government expense and all travel expenses authorized by 6 Foreign Affairs Manual, the Foreign Service Travel Regulations. The orders did not specifically authorize use of a privately owned vehicle as advantageous to the Government. When Mr. Musolf was notified of his transfer from Bonn, Germany, to Washington, D.C., he made special arrangements to have his automobile shipped from Germany to the United States several weeks before his departure by air so that he would be able to use it in connection with his home leave before reporting for duty at his new post in Washington, D.C. Nonetheless, when he arrived in the United States, he had to wait 11 days before the automobile was released to him. It is not suggested that he was at fault for any part of the delayed release.

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The Department of State denied Mr. Musolf's claim
for actual subsistence expenses for the 11-day delay
because the agency's travel regulations contained no
explicit authority for the payment. Our Claims Group
affirmed that disallowance, noting that this Office had
not approved per diem or actual subsistence expenses for
such delay unless use of the automobile had been author-
ized as advantageous to the Government. Upon appeal
Mr. Musolf suggests that he was authorized use of his
automobile for travel to and from his home leave point
as indicated by the statement "* * * on constructive
cost basis, POV use is authorized," in a subsequently
filed Form DS 1707 entitled "Leave, Travel and Consul-
tation Status."

Section 145.2a(1) of the Foreign Service Travel
Regulations outlines the situations in which use of
a privately owned vehicle will be considered advanta-
geous to the Government for employees of the Department
of State. In other than those circumstances an affirma-
tive determination of advantage to the Government is
required. Mr. Musolf's travel does not fall within the
limited circumstances defined in section 145.2a(1) and
no affirmative determination of advantage was made in
his case. The quoted notation from his Form DS 1707
instead indicates that his use of the automobile was a
matter of personal convenience. The statement that he
was authorized use of a privately owned vehicle on a
"constructive cost basis" reflects the following limita-
tion set forth in section 145.3a of the Foreign Service
Travel Regulations:

"145.3 When Used for Personal Convenience

"a. For State and AID

"When no determination of advantage to
the Government is made and the employee
elects to use a privately-owned vehicle
for personal convenience, reimbursement
for expenses for travel will be the lesser
of:

    "(1) Mileage, at the rates provided
in section 145.1, plus related per diem and
other expenses; or

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"(2) The constructive cost of less than first-class air accommodations on a direct route, plus related per diem and other expenses. * * *"

.. We have held that a Federal employee may be entitled to per diem or actual subsistence expenses while awaiting the delivery of his automobile at the port of debarkation where the delay in availability of the automobile was beyond the employee's control. See Marvin W. Shoaf, B-181344, February 12, 1975; B-170850, June 9, 1971, and December 31, 1970. In these cases the use of a privately owned vehicle to continue travel from the port to which the automobile was shipped was authorized as advantageous to the Government.

Mr. Musolf was authorized to travel by commercial air carrier and his election to travel by privately owned vehicle was a matter of personal preference. His reimbursement for such travel is on a constructive cost basis, that is, he is entitled to reimbursement of costs incurred up to the cost the Government would have paid had he and his family used common carrier for the travel involved. However, in computing constructive costs, it is noted that under sections 156.5-1 and 157.1 of the Foreign Service Travel Regulations, neither per diem nor actual subsistence expenses may be paid for leave taken while in a travel status.

Since Mr. Musolf's travel by privately owned vehicle was not authorized as advantageous to the Government, he may not be paid additional subsistence expenses for the 11-day period he delayed his travel while awaiting the delivery of his automobile. The Claims Group's disallowance is sustained.

for _Milton J. Socolar_
Comptroller General
of the United States

UNITED STATES GOVERNMENT

GENERAL ACCOUNTING OFFICE
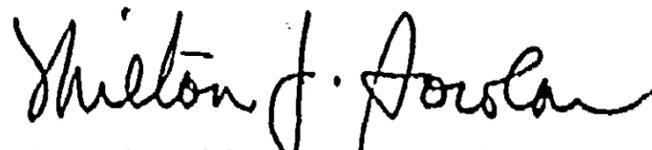
Memorandum

March 2, 1982

TO : Associate Director, AFMD - Claims Group (Room 5858)

FROM : Comptroller General

SUBJECT: Actual Subsistence Expenses for Delay in Transfer
Travel - Mr. Lewis E. Musolf - B-202856-O.M.

Returned is Claims File No. Z-2830072. Also attached is
a copy of decision B-202856, of today's date, sustaining the
previous denial of a claim for actual subsistence expenses
for an uncontrollable delay while awaiting release of an
automobile after return from overseas.

Attachments