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**DECISION**



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

**FILE:** B-204725

**DATE:** June 2, 1982

**MATTER OF:** Robert L. Greer - Per diem while on sick leave

**DIGEST:** An itinerant employee who became incapacitated due to illness while traveling between temporary duty stations claims reimbursement for per diem expenses incurred by him at his only residence during the period of sick leave. Employee's claim may not be paid since his entitlement to continuation of per diem under 5 U.S.C. § 5702(b) (1976) and implementing regulation, Federal Travel Regulations para. 1-7.5b(1), terminated upon the employee's return to his only residence.

J. R. Ruiland, Budget and Accounting Officer, U.S. Department of Transportation, Federal Highway Administration (DOT/FHA), Region Eight, has requested an opinion as to whether Mr. Robert L. Greer, a field project employee, may be allowed per diem expenses for sick leave taken by him during a period of official travel between temporary duty stations.

We concur with the DOT/FHA's action disallowing Mr. Greer's claim, since an employee's entitlement to continuation of per diem under 5 U.S.C. § 5702(b) (1976) terminates upon the employee's return to his home.

On April 16, 1981, Mr. Greer, temporarily stationed in Happy Camp, California, was assigned to a project involving further temporary duty in Porterville, California. Pursuant to his travel orders, Mr. Greer left Happy Camp on April 23, 1981. On April 24, 1981, while enroute to Porterville, Mr. Greer stopped at his residence in Sacramento where he remained in a sick leave status from April 27 to May 8, 1981.

After arriving at his next temporary duty post, Mr. Greer submitted to the DOT/FHA a voucher including a claim for per diem expenses for the period of his sick leave. This claim was administratively disallowed based on the fact that it related to expenses incurred by Mr. Greer at his residence. The agency cited Department of Transportation Travel Manual section 740a and Federal Travel Regulations, FPMR 101-7, para. 1-7.6a (May 1973) (FTR), which state that per diem may not be paid to an employee at his official duty station or at his place of abode from which he commutes daily to his official station.

At the outset, the agency reports that, although Mr. Greer has been assigned a permanent duty station in Denver, Colorado, for administrative purposes, his position involves constant travel between temporary duty posts. Mr. Greer neither maintains a residence in Denver nor does he spend a significant amount of time there. Also, the agency has advised us that Mr. Greer's only residence is in Sacramento, California.

Mr. Greer based his request for administrative reconsideration of his claim on a provision contained in DOT/FHA's Administrative Procedures Manual allowing continuation of per diem expenses for 14 days to an employee who enters sick leave status while traveling on official business. This provision is derived from FTR para. 1-7.5b(1). That paragraph states:

"Whenever a traveler takes leave of absence of any kind because of being incapacitated due to his illness or injury not due to his own misconduct, the prescribed per diem instead of subsistence, if any, shall be continued for periods not to exceed 14 calendar days (including fractional days) in any one period of absence unless, under the circumstances in a particular case, a longer period is approved."

This regulation, in conjunction with other per diem provisions contained in FTR para. 1-7.5b, implements 5 U.S.C. § 5702(b), which provides that:

"Under regulations prescribed under 5707 of this title, an employee who, while traveling on official business away from his designated post of duty \* \* \* becomes incapacitated by illness or injury not due to his own misconduct, is entitled to the per diem allowance and appropriate transportation expenses to his designated post of duty, or home or regular place of business as the case may be."

The general per diem provisions in the FTR are not designed for an employee like Mr. Greer who is constantly in a travel status. While FTR para. 1-7.6a provides that "[p]er diem instead of subsistence may not be allowed an employee either at his permanent duty station or at the place of abode from which he commutes daily to the official station," there is no comparable provision for an itinerant employee, like Mr. Greer, whose only residence is at a distance from his permanent duty station, which he seldom visits, and who does not have a residence from which he regularly commutes to work. Nevertheless, the prohibition set forth in FTR para. 1-7.6a indicates that the intent of the regulations is to disallow payment of per diem to an employee at his only residence. Different considerations, not relevant here, are present where an employee maintains two residences, one at his permanent duty station, and another in the vicinity of temporary duty stations. See 30 Comp. Gen. 511 (1951).

Thus, we believe that when FTR para. 1-7.5b(1) and para. 1-7.6a and 5 U.S.C. § 5702(b) are read together, it is proper to conclude that when an itinerant employee, like Mr. Greer, becomes ill while on temporary duty, he is not entitled to continuation of per diem under 5 U.S.C. § 5702 after he reaches his only residence, even though that residence is not at his permanent duty station. This comports with the intent of the regulations by insuring that an employee who is staying at his only residence does not receive per diem,

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because per diem is designed to reimburse an employee for the extra expenses arising because he is not at his residence. Bornhoft v. United States, 137 Ct. Cl. 134, 136 (1956).

Accordingly, we find that Mr. Greer may not be paid per diem for the period he spent on sick leave at his home.

*Milton J. Fowler*  
for Comptroller General  
of the United States