

DECISION

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

FILE: B-205262 **DATE:** July 7, 1982
MATTER OF: Arthur F. Colombo

DIGEST: A transferred employee claims additional per diem for period when traveling between old and new official stations and during occupancy of temporary quarters after his reimbursement was reduced to comply with the per diem rate pertaining to permanent changes of duty station established by the Department of the Interior. His claim may not be allowed because the determination as to what per diem rate will be authorized is within the discretionary authority of the employing agency. Paragraph 1-7.3a, FTR.

The Bureau of Mines, Department of the Interior, requests our decision whether payment may be made to a transferred employee on his reclaim voucher for per diem and temporary quarters subsistence expenses. The employee's claim is based on the per diem rate established by his travel orders which is in excess of the rate established by the Department for travel between his old and new duty stations and while occupying temporary quarters. Payment may not be made since purported authorization of per diem at a rate in excess of that set by agency regulations is without effect.

Mr. Arthur F. Colombo, an employee of the Bureau of Mines, was transferred from Bloomington, Minnesota, to Reno, Nevada, by travel authorization specifying per diem allowances of \$35 per day for the employee, \$26.25 for family members over 12 years of age, and \$17.50 for family members under 12. When Mr. Colombo submitted his claim for travel allowances and temporary quarters subsistence expenses derived from these rates, his reimbursement was reduced to comply with the \$30 per diem rate for permanent changes of station entitlements established by departmental regulations.

Chapter 13 of Part 347 of the Departmental Manual sets forth regulations governing permanent change-of-station allowances for Department of the Interior employees. Essentially it provides that the specific provisions of the Federal Travel Regulations (FTR) (FPMR 101-7) will govern the payment of such allowances. Subsection 347.13.8 provides

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that temporary quarters subsistence expenses will be reimbursed on an actual expense basis subject to the "maximum allowance permitted by para. 2-5.4 of the FTR." Paragraph 2-5.4 establishes a formula for temporary quarters subsistence expense reimbursement based on fractions of "a daily rate not in excess of 75 per cent of the maximum statutory per diem rate." The \$30 rate is applicable by virtue of a May 25, 1977 memorandum which promulgates the FTR with adaptations for departmental use. It extends and clarifies a memorandum dated June 4, 1975, establishing a reduced per diem rate of \$30 for permanent change-of-station travel and temporary quarters subsistence expense purposes.

The certifying officer believes that the per diem rate set by regulations of the Department of the Interior is for application and that the employee may not be reimbursed on the basis of per diem rates that conflict with such regulations, even though purportedly authorized in the employee's travel orders.

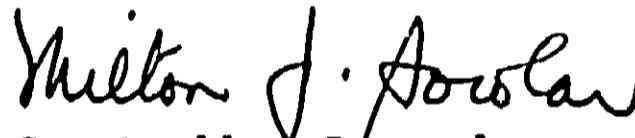
The statutory authority for payment of a travel allowance for a transferred employee is contained in 5 U.S.C. 5724(a)(1). Subsection 5724a(a)(1) provides that under such regulations as the President may prescribe a transferred employee for whom the Government pays travel and transportation is entitled to per diem for his immediate family while en route between the old and new official stations not in excess of the maximum per diem rates prescribed by or under 5 U.S.C. 5702 (a rate not to exceed \$35). A transferred employee may also be authorized subsistence expenses for himself and his family for a period of 30 days while occupying temporary quarters. That allowance is based on average daily rates for subsistence expenses per individual to be set by regulation not in excess of the maximum per diem rates prescribed by or under 5 U.S.C. 5702 (a rate not to exceed \$35). 5 U.S.C. 5724a(a)(3).

Paragraphs 2-2.1 and 2-2.2 of the FTR, issued in implementation of 5 U.S.C. 5724(a)(1) and 5724a(a)(1) provide that for the employee and his immediate family per diem shall be allowed in accordance with the provisions of Chapter 1. Paragraph 1-7.3a, Chapter 1, of the FTR, states in pertinent part that "It is the responsibility of each department and agency to authorize only such per diem allowances as are justified by the circumstances affecting the

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travel." Thus, there is no requirement that per diem be authorized at the maximum statutory rate upon transfer from one official station to another. Therefore, the determination as to what per diem rate will be authorized is within the discretionary authority of the administrative officials concerned. Matter of Johnson, B-201508, July 15, 1981.

Since the Department of the Interior has established a per diem rate of \$30 payable when traveling between the old and new official stations and for purposes of the temporary quarters subsistence expenses allowance, there was no authority by which Mr. Colombo could be authorized either allowance based on a higher per diem rate. To the extent his travel order purports to establish a rate in excess of \$30, that purported authorization is without effect. Accordingly, Mr. Colombo's claim for reimbursement of additional per diem or temporary quarters subsistence expenses may not be allowed.



Acting Comptroller General
of the United States