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DECISION



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

FILE: B-206720

DATE: June 23, 1982

MATTER OF: Thomas P. DeCair - Actual Subsistence Expenses - Excess Cost of Hotel Room

DIGEST: An employee on temporary duty in a high-rate geographical area stayed at a hotel room next to the Attorney General in order to conduct press conferences for the Attorney General. Employee may not be reimbursed for that part of the rental cost that exceeds the daily maximum amount allowable. The excess cost may not be treated as a necessary expense of conducting official business, rather than as part of actual subsistence expenses, since the employee incurred no extra expenses for the room due to the press conferences conducted there.

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Kevin D. Rooney, Assistant Attorney General for Administration, has requested our opinion concerning the proper reimbursement of an employee for expenses of renting a hotel room in a high-rate geographical area while on official travel. The question presented is whether the expense of the hotel room should be charged to the employee as part of his actual subsistence expenses when the hotel room was used for both his personal lodging and to conduct press conferences. The answer is yes and all expenses incurred over the statutory limitation must be paid by the employee.

Reimbursement for actual subsistence expenses while on travel on official business to a high-rate geographical area is limited by statute to \$75 per day. 5 U.S.C. § 5702(c), as amended by Pub. L. No. 96-346, § 1, September 10, 1980, 94 Stat. 1148. We have held that this limitation applies to the rental of hotel rooms, even if the rooms are contracted for by the agency, since such a method cannot be used to circumvent the limitation on reimbursement for travel expenses. B-195133, January 19, 1981, 60 Comp. Gen. 181 (1981).

Thomas P. DeCair, Director of Public Affairs in the Department of Justice, accompanied the Attorney General to New York City on August 30, 1981. Adjacent

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\$164 per room. The travel orders authorized reimbursement for actual subsistence expenses up to \$75 per day. We have been advised that the Attorney General was reimbursed \$75 for his expenses that day. The only question before us is as to Mr. DeCair's expenses.

Mr. Rooney contends that the excess rental cost should be reimbursed pursuant to para. 1-9.1b of the Federal Travel Regulations, (FPMR 101-7, May 1973) (FTR), which specifically authorizes reimbursement for the rental of a hotel room when necessary to transact official business. The employee may be reimbursed for the expenditure upon presentation of receipts or explanation on voucher under FTR para. 1-11.3c(8). Mr. Rooney states that Mr. DeCair should be reimbursed for the full amount of the room rental in accordance with FTR para. 1-9.1b based on equitable considerations. He states that it was necessary for Mr. DeCair to occupy the room adjacent the Attorney General's to conduct press conferences and it was not practical for him to obtain a lower cost room at another hotel. No lower cost rooms were available at the Hotel Pierre. The record does not indicate, however, that the occupancy of the room next to the Attorney General's was necessary for press conferences irrespective of where the employee lodged.

We conclude that Mr. DeCair may not be reimbursed under FTR para. 1-9.1b. In a recent case similar to this, we held that when an employee on travel conducts official business at his hotel room, the cost of room is part of his actual subsistence expense allowance since no extra costs were incurred due to the business conducted in the room. Jack L. Rhoades, B-200040, May 6, 1981. That decision was based on our decisions B-35306, June 29, 1943, and B-129696, December 13, 1956, in which we held that only the charges in excess of those charged for single rooms available at the same hotel for lodging purposes could be paid for as rental of office space for official business. The remainder of the room rental charge was required to be paid by the employee as the cost of his personal lodging. Since, in our case, the reimbursement sought by Mr. DeCair is for the normal single occupancy rate, there is no authority to reimburse him for any additional expense.

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The only difference between this case and Jack L. Rhoades is that here the travel was performed by a high-level employee accompanying a cabinet member. However, we have stated that, in fixing the amount that may be reimbursed for travel costs, neither the Congress nor the President has deemed it necessary or advisable to make any distinction between employees based upon their rank or the importance of the duties to be performed. B-35306, June 29, 1943. That statement is still applicable today and, therefore, Mr. DeCair's claim for reimbursement for subsistence expenses over the \$75 per day limitation is denied.

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