

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-208473**DATE:** October 20, 1982**MATTER OF:** Milton S. Mintz - Actual Subsistence
Expenses

DIGEST: Employee was authorized temporary duty travel and actual subsistence expenses of \$75 per day to attend a conference. Due to high lodging costs, employee was allegedly advised by agency officials that he could be reimbursed actual subsistence expenses exceeding the maximum statutory amount of \$75, if he obtained a waiver of the statutory limitation. 5 U.S.C. § 5702(c) (Supp. IV 1980). Employee's claim for subsistence expenses in excess of \$75 per day is denied since the statutory maximum may not be waived or modified. Furthermore, the Government may not be bound by the erroneous acts or advice of its employees.

Mr. V. Joseph Startari, an authorized certifying official of the Department of Energy, requests an advance decision on the reclaim voucher of Mr. Milton S. Mintz, an employee of the Department of Energy, for actual subsistence expenses exceeding the maximum amount stated in 5 U.S.C. § 5702(c) (Supp. IV 1980). We hold that the employee may not be paid the reclaimed amount since the maximum rate of actual subsistence expenses is fixed by statute and may not be waived or modified.

Mr. Mintz was authorized round-trip travel from Washington, D.C., to Chicago, Illinois, to attend a conference in Chicago during the period August 25 to August 28, 1982. Prior to issuance of the travel orders, Mr. Mintz advised his supervisor that, in view of the high price of hotel accommodations in the vicinity of the conference, subsistence expenses at the maximum rate of \$75 per day would be inadequate to cover the costs of his trip. In response to this

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information, agency officials allegedly advised Mr. Mintz to request a waiver of the \$75 per day limitation. Mr. Mintz wrote his request for waiver on the face of the travel order authorizing actual subsistence expenses. Administrative officials processed the document without questioning or taking any other action with respect to the waiver request.

After Mr. Mintz returned from his trip, he was informed that reimbursement of actual subsistence expenses would be limited to the statutory maximum of \$75 per day. The employee filed a reclaim voucher in the amount of \$47.74, requesting reimbursement of the expenses which exceeded the statutory maximum.

The authority for payment of actual subsistence expenses is contained in 5 U.S.C. § 5702(c) (Supp. IV 1980) which provides that:

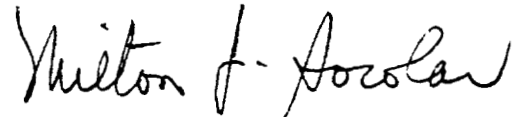
"Under regulations prescribed under section 5707 of this title, the Administrator of General Services, or his designee, may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of official travel when the maximum per diem allowance would be less than these expenses, except that such reimbursement shall not exceed \$75 for each day in a travel status within the continental United States when the per diem otherwise allowable is determined to be inadequate (1) due to the unusual circumstances of the travel assignment, or (2) for travel to high rate geographical areas designated as such in regulations prescribed under section 5707 of this title."

Implementing regulations contained in paragraph 1-8.2a of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), additionally provide that agencies shall determine appropriate and necessary daily maximum rates not to exceed the statutory maximum daily rate of \$75.

We have held that the statutory maximum daily rate for actual subsistence expenses may not be waived or modified even where there is an indication of extenuating circumstances. See B-164228, October 9, 1975. Since Mr. Mintz has been reimbursed subsistence expenses at the maximum rate stated in 5 U.S.C. § 5702(c), he may not be reimbursed any additional amount.

Mr. Mintz argues that he should not be held liable for expenses exceeding the statutory maximum because he acted in good faith based on agency officials' advice with respect to, and apparent approval of, his request for waiver. Whether he interpreted the officials' advice and actions in a reasonable manner is not in question because no authority exists for an official of the United States to authorize entitlements which are precluded from being paid by statute and regulation. It is well established that the Government is not bound by the erroneous acts or advice of its employees even though committed in the course of their official duties. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Utah Power & Light Co. v. United States, 243 U.S. 389, 409 (1917); Steven A. Knutson, B-204372, February 8, 1982.

Accordingly, while it is unfortunate that a misunderstanding may have occurred, there is no authority for payment of actual subsistence expenses exceeding the statutory maximum. The reclaim voucher may not be certified for payment.



Acting Comptroller General
of the United States