

DECISION



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

FILE: B-208590

DATE: November 24, 1982

MATTER OF: Warren Shapiro

- DIGEST:**
1. Civilian employee of the Department of Defense is not entitled to additional per diem for travel by privately owned vehicle in connection with a permanent change of station from the United States to an overseas post since he has already received the maximum amount allowed under the regulations for that portion of his travel. The fact that he left his former duty station early to deliver his automobile to the port for shipment does not permit the increase in the number of days authorized for per diem payments under the applicable regulations.
 2. Under the provisions of the Joint Travel Regulations, an employee of the Department of Defense is not entitled to additional foreign transfer allowance for subsistence expenses incurred after he departed from his former duty station in the United States en route to a new foreign permanent post of duty. Employee's delay at the port of embarkation because he delivered his automobile for shipment does not permit payment of the allowance at other than the old or new duty station.

This action is taken upon the appeal by Mr. Warren Shapiro, a civilian employee of the Department of the Army, of the action of our Claims Group which denied his claim for additional per diem or in the alternative, an additional amount in foreign transfer allowances. The denial of the claim is sustained.

Mr. Shapiro received travel orders for permanent change of station travel for himself and his dependent from his old duty station at St. Louis, Missouri, to his new duty station, Seoul, Korea. He was authorized to travel by Government or commercial air carrier or by personally owned vehicle from St. Louis to Oakland, California, from which point his automobile was to be shipped to Seoul. His travel orders also provided for the subsistence expense portion of a foreign transfer allowance, not to exceed 10 days, as authorized by regulation.

The record indicates that on September 9 and 10, 1981, when his household goods were being packed for shipment, Mr. Shapiro

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vacated his residence in Manchester, Missouri, and resided in commercial (temporary) quarters. For the expenses he incurred during these 2 days, he claimed and was paid foreign transfer allowance.

Mr. Shapiro states that he had been informed by Army personnel that he would be allowed 7 days for his travel by automobile on a constructive traveltime basis. He explains that because he was required to deliver his automobile for shipment at Oakland by 2:30 p.m. on Friday, September 18, 1981, he departed the St. Louis area on Friday, September 11 (traveling by privately owned vehicle). He states that he arrived in the San Francisco-Oakland area on Tuesday, September 15.

Mr. Shapiro was paid per diem on a constructive traveltime basis, which allows 1 day's per diem for each 300 miles of official distance traveled. On this basis he was paid per diem for 7-1/2 days, although he completed the travel from Missouri to Oakland in 5 days. He was scheduled for port call on Sunday, September 20. However, he states that because he was required to deliver his automobile for shipment by 2:30 p.m. on Friday, September 18, he had to arrive at the port area prior to the scheduled date for port call.

He claims he is entitled to per diem or foreign transfer allowance for subsistence expenses to cover the entire period from the time he left his old duty station in Missouri through September 20 when he reported for port call at Travis Air Force Base, California. Since he was paid per diem for 7-1/2 days, he now requests additional payment for 2-1/2 days, stating that he should not be required to bear the living expenses he and his dependent incurred in the San Francisco-Oakland area from the time he delivered his automobile for shipment on Friday until port call on Sunday.

The Claims Group denied Mr. Shapiro's claim on the basis that there is no authority for payment of any additional per diem in this case, and that since the authorization of a foreign transfer allowance is a matter within the discretion of the employing agency, the amount allowed may not be questioned in the absence of evidence showing that the agency's decision was erroneous.

It appears that the basis of Mr. Shapiro's appeal is, in effect, that his living expenses for the total number of days between the time he moved out of his residence at his old duty

station until he reported for port call in California should be covered by either per diem or the foreign transfer allowance.

We know of no regulatory provision which authorizes per diem for early arrival or delay at the port of embarkation caused by the delivery of an automobile for shipment. See Volume 2, Joint Travel Regulations (2 JTR), paragraph C11004. Since Mr. Shapiro received the maximum per diem authorized, there is no authority to pay him additional per diem in connection with his travel from Missouri to California. 2 JTR, paragraph C4300-1.

As to the foreign transfer allowance, he was authorized up to 10 days but was actually paid for only 2 days, which covered the 2 days he occupied commercial lodgings after moving out of his residence in Missouri prior to beginning actual travel. Payment of a foreign transfer allowance is authorized by 5 U.S.C. § 5924 which provides in part as follows:

"The following cost-of-living allowances may be granted, when applicable, to an employee in a foreign area:

* * * * *

"A transfer allowance for extraordinary, necessary, and reasonable expenses, not otherwise compensated for, incurred by an employee incident to establishing himself at a post of assignment in--

"(A) a foreign area (including costs incurred in the United States prior to departure for a post of assignment in a foreign area) * * *." (Emphasis added.)

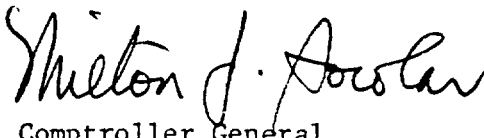
This statute is implemented by the Standardized Regulations (Government Civilians, Foreign Areas) issued by the Department of State, and applied to Department of Defense employees by Volume 2, Joint Travel Regulations, chapter 13. Section C13004-2, 2 JTR, provides in relevant part:

"2. FOREIGN TRANSFER ALLOWANCE (SE). The foreign transfer allowance, subsistence expense portion, may be authorized or approved for the

employee and/or each dependent for up to 10 days before final departure from a duty station in the 50 states and the District of Columbia to a duty station in a foreign area. * * * (Emphasis added.)

The statute authorizes payment of the allowance for certain expenses incurred "prior to departure" for the new post and, under the regulatory interpretation of the statute, the allowance only covers expenses incurred prior to the employee's departure from the old duty station. Thus, in this instance we will not disturb the agency's determination that the foreign transfer allowance is not payable for subsistence expenses incurred in California after the employee's departure from Missouri for his new station in Korea.

Since Mr. Shapiro has received the full amounts of per diem and foreign transfer allowance authorized by the regulations, his claim may not be allowed, and the action of the Claims Group disallowing it is sustained.

for 
Comptroller General
of the United States