



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Henry L. Huffman, Jr.--Reimbursement of cost of
commercial lodgings
File: B-225082
Date: September 3, 1987

DIGEST

Civilian employee of Air Force on temporary duty may be reimbursed for commercial lodging although he did not obtain a certificate of nonavailability of Government quarters as required by 2 JTR para. C1055. Employee's travel orders referenced agency regulation that orders were complete as regards use of quarters. Therefore, since he received travel advance including a portion of per diem for lodging expenses, his travel orders effectively provided that Government quarters were not available to him, and he may be reimbursed his lodging expenses.

DECISION

We are asked to decide whether Mr. Henry L. Huffman, Jr., an employee of the Defense Logistics Agency in Jacksonville, Florida, may be authorized additional per diem for lodging costs he incurred while on temporary duty at a military installation when he failed to obtain a certificate of non-availability of Government quarters.^{1/} Under the unique circumstances of this case he may be reimbursed the claimed expenses.

BACKGROUND

From August 19 to 28, 1985, Mr. Huffman was in a temporary duty status while attending a training course at McDill Air Force Base, Florida. On August 6, 1985, he was issued travel orders indicating, among other things, that the

^{1/} The question was submitted by Mr. Peter H. Tovar, Chief Accounting and Finance Division, Office of the Comptroller, Defense Logistics Agency, Headquarters, Cameron Station, Alexandria, Virginia.

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estimated per diem was \$671 and the estimated cost of his travel was \$60, resulting in an authorized travel advance of \$584, which he received. The \$671 cost estimate was based on the cost for commercial lodgings and meals while on temporary duty. Additionally, his travel orders indicated that payment of mileage expenses was authorized for driving his car from his motel to the temporary duty site. His travel orders also stated that they met "the criteria for DLA 5000.1 Travel," an internal agency regulation which according to the submission states that "travel orders should be specific as to requirements for use of quarters."

Mr. Huffman performed his temporary duty and stayed in commercial lodgings. When he submitted his travel voucher, the cost of his commercial lodgings, which totaled over \$500, was disallowed.

When Mr. Huffman questioned the disallowance of his lodging expenses, he was advised that, under the applicable travel regulations, he had to obtain a certificate of nonavailability of Government quarters at McDill Air Force Base before he could be reimbursed for his motel expenses. He indicates that he had been unaware of this requirement and if he had known of it he would have obtained the certificate or stayed in Government quarters. He considers it unfair to be denied his commercial lodgings, especially since he was not informed on his travel orders that he needed to obtain a certificate of nonavailability. Moreover, he questions whether he can be denied reimbursement of these lodging expenses since DLA 5000.1, the regulation referenced on his travel orders, mandates the agency to be specific as to requirements for use of quarters, and he was not apprised of his need to obtain the certificate.

Supervisory personnel at Mr. Huffman's agency support his contentions, and indicate that the notification of the requirement to obtain a certificate of nonavailability of Government quarters was not included in his travel orders because of an administrative oversight. DLA personnel contacted the billeting office at McDill Air Force Base in July 1986, but by that time nearly a year had gone by since Mr. Huffman's travel and the billeting office personnel were unable to determine whether or not quarters had been available for him in August 1985.

ANALYSIS

Section 5702(a) of title 5, United States Code (1982), provides that under regulations prescribed under 5 U.S.C. § 5707, an employee, while traveling on business away from

his designated post of duty, is entitled to a per diem allowance for travel inside the continental United States. Furthermore, with limited exceptions, such per diem allowances must include an amount for commercial lodgings. Specifically, under 5 U.S.C. § 5911(e), a civilian employee cannot be required to occupy Government quarters in the absence of a determination by the agency head that such occupancy is necessary for the proper completion of the employee's mission or for the protection of Government property. See B-195859, March 18, 1980. Thus, if an employee stays in commercial lodgings instead of available Government quarters he is entitled to receive the appropriate lodging portion of his per diem allowance.

For Department of Defense employees, however, there is a different rule regarding the use of Government quarters while on temporary duty or training. For many years, Congress has placed a limitation in the Department of Defense annual appropriation providing that none of the funds appropriated are available to pay lodging expenses incurred by any person on official business away from his home or regular place of duty when adequate Government quarters are available, but are not occupied by such person. See e.g., the Department of Defense Appropriation Act, 1985, Pub. L. No. 98-473, § 8038, October 12, 1984, 98 Stat. 1837, 1930 (the appropriation limitation in effect when Mr. Huffman traveled). Consequently, if a DOD employee stays in commercial lodging while on temporary duty and adequate Government quarters are available, then generally he cannot receive the lodging portion of his per diem allowance.

To implement the appropriation limitation, the Department of Defense has promulgated paragraph C1055 of Volume 2, Joint Travel Regulations,^{2/} which states the conditions under which a Department of Defense employee may be reimbursed for use of commercial quarters:

"1. GENERAL. Although an employee may not be required to utilize Government quarters, when adequate Government quarters are available but not used, the payment of the quarters portion of the per diem or actual expense allowances of any employee on temporary duty away from his

^{2/} Volume 2 of the Joint Travel Regulations is applicable to all civilian employees of the Department of Defense.

designated post of duty may not be made except under the following conditions:

"1. when the order-issuing authority, either prior or subsequent to the travel involved, issues a statement to the effect that the utilization of Government quarters at the temporary duty station or delay point would adversely affect the performance of the assigned mission (this exception is not applicable to personnel attending training courses at an installation of the Uniformed Services);

"2. when, prior to the travel involved, the order-issuing authority, as a result of direct communication with the commanding officer (or designated representative) responsible for Government quarters at the temporary duty station or delay point concerned, issues a statement to the effect that adequate Government quarters at the temporary duty station or delay point will not be available;

"3. when the commanding officer (or designated representative) responsible for Government quarters at the temporary duty or delay point furnishes a statement to the effect that utilization of Government quarters was impracticable;

* * * * *

"2. EFFECT OF ABSENCE OF STATEMENT. In the absence of a statement issued under the provisions of subpar. 1 or unless the nonavailability of adequate Government quarters can be ascertained by reference to a publication issued by the Uniformed Service concerned, it shall be assumed that adequate Government quarters were available on any day for which the employee fails to submit an appropriate statement * * * indicating that such quarters were not available or not utilized on that date. * * *"

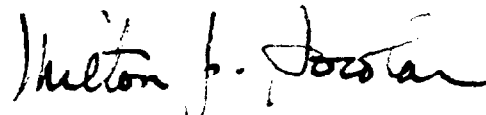
The limitation in the Appropriation Act and the implementing regulation clearly set out that payment of the quarters portion of per diem expenses is prohibited when adequate Government quarters are available, but not used. Therefore,

generally, unless an employee can produce a certificate of nonavailability, he may not receive reimbursement of commercial lodging expenses. See e.g., Jerry Cardinal, B-191297, August 2, 1979; Ronald Miele, B-192271, November 8, 1978. In the absence of the certificate, the assumption that there were adequate Government quarters is usually dispositive of the matter.

Under the unique circumstances of this case, we do not consider that our precedents in this area, as exemplified by the two above-cited cases, are applicable to Mr. Huffman's situation. They are factually distinguishable, since the employee in each instance either knew that Government quarters were available or knew that he was required to obtain a certificate of nonavailability. Mr. Huffman's travel orders, however, led him to believe that he was to stay in commercial lodgings since his orders cited to DLA 5000.1, and he had received a travel advance including an amount for lodging.

DLA 5000.1, Paragraph VIII B6 entitled "TDY to Attend Training Courses" in the third sentence states "to preclude misunderstanding on the part of the travelers or subsequent erroneous reimbursement applicable travel orders should be specific as to requirements for use of quarters or should specify the applicable per diem rate." Mr. Huffman's orders specifically stated that "[t]his request meets the criteria for DLA 5000.1 Travel." However the orders did not contain a statement concerning Quarters.

We, therefore, conclude that his orders were consistent with paragraph C1055 1.2 of 2 JTR. That is, the effect of Mr. Huffman's orders specifying that the orders meet the requirements of DLA 5000.1 coupled with the travel advance he received may be considered constructive notice to Mr. Huffman that adequate Government quarters were not available to him at the training site. Accordingly, he may be reimbursed his lodging expenses notwithstanding the fact that he lacks a certificate of nonavailability. C.f. 48 Comp. Gen. 216 (1968). In a situation of this type, there is no presumption that adequate Government quarters were available.


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