



Office of the General Counsel

B-253095

October 5, 1993

Mr. Steve Goldberg, Chief
Office of Travel Management
and Relocation
Internal Revenue Service
Department of the Treasury
Washington, D.C. 20224

Dear Mr. Goldberg:

This further responds to your letter of April 8, 1993, regarding the claim of Ms. [redacted] for additional per diem for a 1-year temporary duty assignment. Ms. [redacted] disagreed with the agency's determination not to approve her claim. We have reviewed the record submitted, and we concur with the disallowance of the claim.

Ms. [redacted], whose permanent duty station was Seattle, Washington; performed temporary duty (TDY) in Washington, D.C., in 1986 for a limited period at full per diem when she was offered a 1-year TDY assignment from November 1986 to November 1987. When Ms. [redacted] was offered the long-term assignment, she was advised that it would be at a reduced per diem rate of \$30 which was based on estimates of her monthly expenses divided by 30 days. Apparently she agreed to accept the assignment on this basis, and that was the basis on which her per diem was authorized and paid.

Ms. [redacted] states that after she completed this assignment, she learned that the agency had authorized full per diem for some other Seattle district employees serving extended TDY assignments in Washington, D.C. In 1992 Ms. [redacted] filed claims with the agency for the difference, asserting that she is entitled to the same per diem as the other employees and that the reduced amount was insufficient to meet her expenses.

In Ms. [redacted] case, the agency appears to have acted properly in authorizing her a reduced per diem rate. The governing provisions of the Federal Travel Regulations state that to prevent authorization of per diem allowances in excess of amounts required to meet the necessary per diem expenses of official travel, agencies should consider

various factors that reduce the employee's necessary expenses. And, the regulations expressly state that agencies should reduce the per diem rate for employees performing extended travel at temporary duty locations where they are able to secure lodging and/or meals at lower costs (e.g., weekly or monthly rentals). 41 C.F.R. §§ 301-7.2(b) and 301-7.12(b) (1993)¹. Therefore, Ms. orders providing for reduced per diem were valid when issued, and once travel is performed, competent travel orders may not be retroactively amended to increase or decrease the rights of an employee. See , B-252836, Aug. 4, 1988, and cases cited therein. See also , B-201508, July 15, 1981.

We have no basis to comment on the per diem authorized for the other employees to whom Ms. refers, since we do not know the circumstances of their assignments. However, while ordinarily we assume it would be appropriate to authorize the same per diem rate for employees traveling under similar circumstances, it is well-settled that the decision to authorize per diem and the determination of the amount of per diem is with the discretionary authority of the employing agency and that there is no legal requirement that individual employees be authorized identical per diem rates.

supra; Savings and Loan Examiners, 67 Comp. Gen. 540 (1988); B-198008, Sept. 17, 1980.²

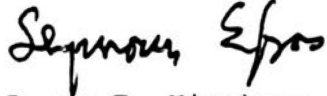
As to the unreimbursed costs Ms. complains of, such as the purchase and licensing of an automobile at the TDY location, trips home on leave, and purchase of some apartment furnishings, these are not the types of lodging, meals and incidental expenses per diem is designed to cover. See FTR § 301-7.1(c).

¹At the time of Ms. travel, these provisions were found in substantially the same form at Federal Travel Regulation paras. 1-7.3 and 1-7.7(c) (Supp. 20, May 9, 1986), incorp. by ref., 41 C.F.R. § 101-7.003 (1986).

²Ms. also suggests that she may have been treated differently because of her sex. This is a matter which is not within our jurisdiction to consider in the settlement of this claim. Allegations of discrimination are within the jurisdiction of the Equal Employment Opportunity Commission. , 64 Comp. Gen. 349 (1985).

Accordingly, the agency's disallowance of the claim is affirmed.

Sincerely yours,



for

James F. Hinchman
General Counsel

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DIGEST

An IRS employee authorized a reduced per diem rate for an extended temporary duty assignment claims the full rate because other employees from her office received the full rate for similar travel and because the amount authorized was insufficient to meet her expenses. The claim is denied. Agencies are to reduce per diem rates for extended temporary duty assignments where meals and lodgings can be secured at a reduced cost. 41 C.F.R. 301-7.12(b) (1993). Once travel is performed, valid travel orders may not be amended to increase the rights of the employee. Also, agencies have no legal obligation to authorize identical per diem rates for different employees.