

DECISION

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

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FILE: B-58380

DATE: AUG 3 1976

MATTER OF: William E. Addis - Temporary Quarters Allowance

DIGEST: Civilian employee of U.S. Customs Service was transferred from San Diego, California, to downtown Los Angeles, California, a designated high rate geographical area, and he occupied temporary quarters in Los Angeles. He is entitled to reimbursement at the maximum statutory per diem rate of \$35 as prescribed by paragraph 2-5.4c of the Federal Travel Regulations and section 5702(a) of title 5, United States Code. He is not entitled to the daily rate of \$37 designated for temporary duty travel in Los Angeles, and the \$33 per diem rate established by regulation is not applicable.

This action is in response to a request dated January 30, 1976, from Mr. Peter F. Gonzalez, Director, Financial Management Division, United States Customs Service, for our advance decision concerning payment of a voucher submitted by Mr. William E. Addis, Jr., Operations Officer, U.S. Customs Service, in which Mr. Addis is claiming a temporary quarters allowance for the period December 14, 1975, through January 12, 1976.

The record discloses that Mr. Addis was transferred from the U.S. Customs District Office in San Diego, California, to the Regional Office of the Customs Service located in downtown Los Angeles, California. The claimant was authorized travel and transportation and relocation allowances including temporary quarters as outlined in the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1, 1973) as amended by Temporary Regulation A-11, effective May 19, 1975. In his letter Mr. Gonzalez points out that the FTR establishes a maximum per diem rate of \$33 per day for travel performed within the conterminous United States, except for designated high rate geographical areas where actual expense rates are authorized, whereas a statutory per diem rate of not to exceed \$35 per day is established by 5 U.S.C. § 5702, as amended. However, Mr. Addis is making his claim for temporary quarters .

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allowance at \$37 a day, the rate established in the FTR for Los Angeles as a designated high rate geographical area.

The following questions are submitted:

- "1. Is the temporary quarters allowance to be based on the \$33.00 or the \$35.00 rate?
- "2. Is the \$37.00 Los Angeles designated rate applicable in relocation allowances?"

Paragraph 2-5.4c of the FTR provides for payment of a daily per diem rate at various percentage levels of the maximum statutory per diem rate for the locality in which the temporary quarters are located.

Section 5702(a) of Public Law 94-22, 89 Stat. 85, May 19, 1975, in revising title 5, United States Code, provides, in pertinent part, that under regulations prescribed under section 5707 of title 5, a Federal employee is entitled to a per diem allowance at a rate not to exceed \$35 for travel inside the continental United States. Therefore, the current maximum statutory per diem rate is \$35. Thus, even though paragraph 1-7.2a of the FTR provides that the per diem allowance for official travel within the conterminous United States shall not exceed a maximum daily rate of \$33, the applicable rate for the temporary quarters allowance is the \$35 maximum rate specified in the statute.

The prescribed maximum daily rate for temporary duty in Los Angeles, California, as a designated high rate geographical area is \$37. Paragraph 1-8.1b of the proposed amendments to the FTR contained in the Federal Register, Volume 41, page 20713, May 20, 1976, provides as follows:

"b. Temporary duty within high rate geographical areas. Actual subsistence expense reimbursement shall be authorized or approved for travel whenever a temporary duty assignment is within a location designated as a high rate geographical area in 1-8.6, except as provided in (1) through (3), below.

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"Notes: The provisions of 1-8.1b pertaining to reimbursement under the high rate geographical area concept are not applicable to travel allowances in connection with a permanent change of station, including travel to seek residence quarters, or to other relocation allowances authorized under chapter 2 of this regulation, including subsistence while occupying temporary quarters."

Thus, Mr. Addis is entitled to the maximum statutory per diem rate of \$35 in accordance with paragraph 2-5.4c of the FTR and section 5702(a) of title 5, United States Code. Since he was involved in a permanent change of station rather than in temporary duty travel, paragraph 1-8.1b of the FTR precludes reimbursement under the high rate geographical area concept at the \$37 daily rate for Los Angeles, California.

Hence, the reply to question No. 1 is that the temporary quarters allowance to be paid Mr. Addis is to be based on the maximum statutory per diem rate of \$35. The reply to Question No. 2 is in the negative. The voucher submitted by the claimant may be paid in accordance with the foregoing, if otherwise proper.

R.F. KELLER

[Deputy] Comptroller General
of the United States