

DECISION

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

FILE: B-182600

DATE: AUG 13 1975

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MATTER OF: Charles F. Whalen - Actual Subsistence Expenses

DIGEST:

On basis of record presented, employee whose temporary duty assignment in California in spring 1970 was interrupted by 2-weeks' temporary duty in New London, Connecticut, may not be paid actual expense allowance based on his having incurred dual lodging costs by retaining California accommodations while in Connecticut. While we have posed no objection to payment of actual subsistence expenses under section 6.12 of OMB Circular No. A-7, based on determination by appropriate official that it was necessary for employee to retain lodgings at first point of temporary duty while on peripheral assignments, no such determination has been made in the present case.

By letter dated October 9, 1974, Mr. Charles F. Whalen, a former Department of the Navy, Philadelphia Naval Shipyard employee, asks our reconsideration of the disallowance of his claim for additional subsistence expenses by our Transportation and Claims Division Settlement Certificate No. 2-2477960 dated July 1, 1974.

Mr. Whalen was assigned to temporary duty at the Mare Island Naval Shipyard in Vallejo, California, for a period of some 6 months beginning March 23, 1970. That assignment was interrupted by a further temporary duty assignment to New London, Connecticut, for the period from May 28 through June 8, 1970. Throughout the period covered by both assignments Mr. Whalen was paid a per diem at the then applicable maximum rate of \$25 per day. In view of the fact that he maintained lodgings in California during the period of temporary duty in New London, the employee submitted a voucher claiming reimbursement for the \$92.40 he paid for lodgings in New London. The amount claimed is supported by vouchers from three motels in which he stayed while in New London.

Disallowance of Mr. Whalen's claim was predicated on the fact that the record presented did not meet the criteria for payment of actual subsistence expenses in excess of the \$25 prescribed per diem as set

forth in the Standardized Government Travel Regulations in effect at the time of his assignment. At section 6.12b(2) thereof the circumstances under which employees may be paid actual subsistence expenses up to a prescribed maximum are set forth as follows:

"(2) Heads of departments and establishments, as defined in the Travel Expense Act of 1949, will, in accordance with the provisions of this section, prescribe conditions under which reimbursement may be authorized or approved for the actual and necessary subsistence expenses of a traveler. Such conditions shall restrict travel on an actual subsistence expense basis to those travel assignments where necessary subsistence costs are unusually high. They should not permit the use of the actual subsistence expense basis where necessary subsistence expenses may exceed the statutory maximum per diem allowance by a small amount. Because hotel accommodations constitute the major part of necessary subsistence expenses, travel on an actual subsistence expense basis might appropriately be authorized or approved for travel assignments which otherwise meet conditions prescribed by the head of the department or establishment where the traveler has no alternative but to incur hotel costs which would absorb all or practically all of the statutory maximum per diem allowance."

As was explained in the Settlement Certificate, this Office has previously allowed reimbursement on an actual expense basis not to exceed the statutory maxima (\$40 at the time of Mr. Whalen's assignment) where an employee had, of necessity, retained lodgings at his first duty point during trips of brief duration to other points where lodgings were also required. Mr. Whalen's claim was denied inasmuch as the record did not contain an appropriate determination that it was necessary for him to retain lodgings in California while on his 2-week assignment to New London.

In requesting further consideration of his claim, Mr. Whalen takes note of our Transportation and Claims Division's statement indicating the above-mentioned insufficiencies in his claim. Hoping to supply those deficiencies, he has forwarded copies of correspondence which he believes will show the "need for, approval of and receipts for additional lodgings." We have reviewed the documents submitted by Mr. Whalen, giving particular attention to those which he purports to rely on most heavily.

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A letter dated February 10, 1971, from the Transportation Officer, Mare Island Naval Shipyard, to the Head of the Mare Island Naval Shipyard Branch, Navy Regional Finance Center, Treasure Island, contains the following statement on which Mr. Whalen apparently relies as evidencing the necessity for retention of his California lodgings while in New London:

" * * * This Command is of the opinion that the employee is entitled to the additional claim since the employee was not requested to give up his local lodging and neither was he expected to give it up for the two weeks; however, the legality of paying lodging expenses while receiving per diem has been questioned."

The record also contains the more express statement made in Mr. Whalen's August 12, 1971 letter to the Navy Regional Finance Center that he "had to maintain lodgings at 848 Mariposa Street, Vallejo, and New London, Connecticut, simultaneously during the subject TDY."

In addition to the above, Mr. Whalen has forwarded a copy of an October 17, 1973 letter addressed to him from the Commanding Officer, Navy Regional Finance Center, stating that action has been initiated "to obtain approval by the cognizant official for reimbursement on an actual expense basis." The record is devoid of anything which purports to grant that approval. In fact the only document in the file responsive to the October 17 letter is Mr. Whalen's own letter written some 5 months later on March 13, 1974, which cites the above-mentioned letter of February 10, 1971, as evidencing the opinion of the Commander of the Mare Island Naval Shipyard that he is entitled to the additional subsistence claimed.

In the cases where we have stated that we would pose no objection to payment of actual subsistence expenses based on an employee's having incurred dual lodging expenses, we have so indicated where the record reasonably reflected that the employee had no alternative but to incur duplicative costs. The earliest of those cases, B-155141, October 20, 1964, involved an employee on temporary duty in Anchorage, Alaska, who made several short trips from Anchorage which required him to obtain lodgings. The Certifying Officer in that case offered the explanation that, in view of the acute housing shortage which followed the earthquake of the preceding spring, it was necessary that the employee not give up his room to assure that accommodations would be available to

him upon his return to Anchorage. Similarly, the nonavailability of living accommodations in Saigon was a principal consideration in B-158882, April 27, 1966, where we indicated that we would have no objection to payment of actual subsistence expenses based upon a determination by an appropriate official that the employee had no alternative but retain lodging at his primary temporary duty post in Saigon while on peripheral temporary duty assignments. See also B-164228, June 17, 1968, where we similarly indicated that actual subsistence expenses might be paid to an employee who stayed in a motel in the Washington, D. C. suburbs rather than return to his hotel in Washington, D. C., in the midst of riots in the District of Columbia.

Mr. Whalen's argument that the opinion of the Transportation Officer as expressed in the February 10, 1971 letter, supra, that he is entitled to actual expenses for dual lodgings because he was not "requested" or "expected" to give up local lodgings is not tantamount to a determination by the Commander of the Mare Island Naval Shipyard as suggested by the employee. Moreover, the fact that he may not have been "requested" or "expected" to give up his California lodgings for the 2-week period of temporary duty in New London is clearly insufficient in light of the cases discussed above and the regulatory requirement for payment of actual subsistence expenses quoted in section 6.12b(2), above, that "the traveler has no alternative but to incur hotel costs which would absorb all or practically all of the statutory maximum per diem allowance." For these reasons, the disallowance of Mr. Whalen's claim by our Transportation and Claims Division is reaffirmed.

R. F. KELLER

[Deputy]

Comptroller General
of the United States