

DOCUMENT RESUME

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[Changed per Diem Rate for Travel and Temporary Quarters in Alaska]. B-189537. December 11, 1978. 5 pp.

Decision re: James C. Wilkinson; by Robert F. Keller, Deputy Comptroller General.

Contact: Office of the General Counsel; Personnel Law Matters I. Organization Concerned: Bureau of Land Management.

Authority: Meritorious Claims Act [of] 1928 (31 U.S.C. 236) . 5 U.S.C. 5702(a). OMB Circular A-56. BCB Circular A-7. B-190014 (1978). B-183633 (1975). B-177417 (1973). B-173927 (1971). B-182324 (1975). B-183246 (1975).

A determination was requested in connection with the allowable rate of per diem payment for an employee while traveling and occupying temporary quarters in connection with a transfer from Arizona to Alaska. The prior per diem rate of \$40 was disallowed, and the employee was entitled only to the rate of \$20 prescribed by a memorandum issued by the agency with an effective date prior to the travel and expenses. However, since denial of reimbursement resulted from administrative failures in implementing the change, the rate reduction was substantial, and the employee was not advised of the change and acted in good faith in relying on travel orders, the matter warrants reporting to the Congress for consideration as a meritorious claim. (HTW)

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DECISION



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

FILE: B-189537

DATE: December 11, 1978

MATTER OF: James C. Wilkinson - Per Diem Rate - Alaska

DIGEST: Claim of civilian employee of Department of Interior, transferred from Phoenix, Arizona, to Fairbanks, Alaska, for per diem allowance in connection with expenses incurred while traveling and occupying temporary quarters at prior per diem rate of \$40 is disallowed. Employee only entitled to per diem at \$20 rate prescribed by instruction memorandum issued by agency with an effective date prior to incurrence of travel and temporary quarters expenses, notwithstanding fact that claimant was not advised and was unaware of reduced per diem rate for Fairbanks, Alaska. However, since denial of reimbursement resulted from administrative failures in implementing the regulatory change in rate of per diem; rate reduction was so substantial; and claimant was a GS-5 employee who acted in good faith reliance on travel orders and representations of agency officials, equities warrant reporting claim to Congress under Meritorious Claims Act, 31 U. S. C. § 236.

This action arises in response to a request by Mrs. Mary M. Rydquist, an authorized certifying officer of the Bureau of Land Management, United States Department of the Interior, for a determination in connection with the claim of Mr. James C. Wilkinson, an employee of the agency, for travel and temporary quarters expenses incurred by him incident to his change of official station from Phoenix, Arizona, to Fairbanks, Alaska, in January 1973.

By Travel Authorization No. SPEC-99, dated November 3, 1972, Mr. Wilkinson was transferred from Phoenix to Fairbanks. He was authorized a per diem allowance, while in travel status, at the rate of \$20 per day while in the United States, \$31 while in Canada, and \$30 in Alaska. His authorized rate of per diem while occupying temporary quarters was \$40 per day, payable at the established percentage rates for each 10-day period.

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On November 17, 1972, Instruction Memorandum No. 72-343, Change 1, was issued to "All Bureau Officials" by the Assistant Director, Administration, Bureau of Land Management, Department of the Interior, Washington, D. C., and standardized the per diem rate at \$20 for changes of official station and occupancy of temporary quarters for all posts of duty, including Fairbanks, Alaska. The modification pertained to "all travel in connection with a transfer of duty station beginning on or after December 1, 1972 * * *." Prior to this change, the per diem rate for Fairbanks was \$40 per day.

Mr. Wilkinson began his travel on December 12, 1972. He later claimed his temporary quarters allowance on a form that had been furnished him before he began his travel by the Office of the Director, Portland Service Center. The form was red-lined and changed in ink to reflect per diem allowances in Alaska based on the percentages for each 10-day period based upon a \$40 per diem rate for Fairbanks. The form was sent to him along with his travel authorization. The record shows that at the time of the transfer the employee was a Geologist, grade GS-5.

On January 9, 1973, Mr. Wilkinson's original travel authorization was amended by the issuance of a second Travel Authorization No. SPEC-99* Amend #1, which quoted a per diem allowance of \$20 per day for his transfer to Fairbanks, Alaska.

The agency states that apparently Mr. Wilkinson was not advised of the change in per diem rates prior to his transfer. He reports that before and after his departure from Phoenix, he was led to believe by officials of the Portland Service Center that his per diem while traveling and while occupying temporary quarters would be at the base rate of \$40 during his first 30 days in Fairbanks. He states that, as it turned out, it was necessary for him and his family to occupy temporary quarters for 39 days as the home which they purchased was not vacated until January 20, 1973. Mr. Wilkinson reports it was not until his arrival in Fairbanks that he was informed that the \$40 per diem rate quoted to him by the Portland office had been reduced to \$20.

The agency reports that it is possible that Mr. Wilkinson was not advised of the change in per diem rates as all employees of the agency do not see copies of letters or instruction memorandums addressed to "All Bureau Officials." As a result of the change in

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per diem rates, the sum of \$511.34 was deducted from Mr. Wilkinson's claim consisting of \$104.99 for per diem and \$406.35 for subsistence while occupying temporary quarters.

Statutory authority governing payment of per diem to civilian employees traveling on official business during the period under consideration is found in 5 U.S.C. § 5702(a) (1970) which stated, in pertinent part, that such employees are entitled to per diem allowances prescribed by the agency concerned. For travel outside the continental United States (including Alaska), the per diem allowance may not exceed the rate established by the President or his designee, who may be the Director of the Bureau of the Budget (now Office of Management and Budget) or another officer of the Government of the United States, for the locality where the travel is performed. The regulations applicable at the time of the claimant's travel were contained in sections 2 and 8, Office of Management and Budget (OMB) Circular No. A-56, August 17, 1971. By Civilian Personnel Per Diem Bulletin No. 34, dated August 23, 1972, issued by the Per Diem, Travel and Transportation Allowance Committee, in force and effect during the period of travel under consideration, the maximum per diem rate established for Fairbanks, Alaska, was \$42. (NOTE: Pursuant to section 1 of Executive Order No. 11294, August 4, 1966, and as contained in section 1a of Bureau of the Budget (BOB) Circular No. A-7, Revised, Transmittal Memorandum No. 4, September 8, 1966, the Secretary of Defense was delegated the authority of the President to establish maximum per diem rates for travel in localities in Alaska, an authority previously delegated to the Director, BOB. Section 6.2 of the Standardized Government Travel Regulations, March 1, 1965, issued by the Director, BOB, delegated to each department and agency the responsibility to authorize only such per diem allowances as were justified by the circumstances affecting the travel.)

The record shows that Mr. Wilkinson commenced travel from Phoenix to Fairbanks subsequent to the issuance date and effective date of Instruction Memorandum No. 72-343. He was not advised and was unaware of the reduced per diem rate for Fairbanks, Alaska, at the time he commenced such travel. On the contrary, he was advised by officials with competent authority that the per diem rate for Fairbanks, Alaska, was \$40. However, we have held in numerous decisions that amendatory regulations changing per diem rates have the force and effect of law and are applicable from the stated effective date and that the rule is applicable not only to cases where the

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individual employee has not received notice of the increase or decrease in rate, but also to cases in which the installation responsible for the employee's temporary duty assignment is not an actual notice of the amendment. B-190014, August 30, 1978; B-183633, June 10, 1975; B-177417, February 12, 1973; and B-173927, October 27, 1971.

Further, this Office has consistently stated that under a subsistence allowance, the legal rights and liabilities of employees and the Government vest as and when the travel is performed under the orders. B-170564, November 12, 1970. Since here, Mr. Wilkinson commenced his travel to Fairbanks on December 12, 1972, subsequent to the effective date (December 1, 1972) of the reduction in the rate of per diem, he was no longer entitled to per diem at the \$40 rate, irrespective of the fact that neither he nor his installation had received notice of the regulatory change prior to the date he commenced travel. While it is unfortunate that Mr. Wilkinson's travel orders were not amended, prior to travel, to properly reflect the reduction in the applicable rate of per diem and that he was not reimbursed for travel and temporary quarters expenses which he incurred in reliance upon his travel orders, all employees are charged with the knowledge that laws and regulations are subject to change from time to time. Matter of Carl W. Kaufman, B-182324, July 31, 1975. Further, the fact that an official of the Government exceeded his authority in granting a benefit in excess of that authorized by law or regulation does not constitute a basis for payment of per diem at the higher improper rate. Matter of Mena Marano, B-183246, April 10, 1975.

In accordance with the foregoing authorities, and since Mr. Wilkinson incurred the claimed travel and temporary quarters expenses subsequent to the effective date of Instruction Memorandum No. 72-343, computation of his per diem entitlement, incurred while traveling and occupying temporary quarters, based upon the \$20 rate, was correct. Therefore, Mr. Wilkinson's claim for reimbursement for such expenses may not be certified for payment.

However, we feel the equities in the instant case, particularly the substantial reduction in the subsistence rate and the GS-5 grade level of the employee at the time the claimed expenses were incurred are such as to warrant our reporting this matter to the Congress pursuant to the Meritorious Claims Act of April 10, 1928, 31 U.S.C. § 238 (1970).

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Accordingly, we are forwarding a report to the Congress requesting consideration of the claimed travel and temporary quarters expenses for reimbursement by the Government as a meritorious claim.

R. A. K. 114
Deputy Comptroller General
of the United States