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DECISION



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

FILE: B-195366

DATE: June 26, 1980

MATTER OF:

Unusual circumstances of travel -
Payment of actual expenses
travel

DIGEST:

1. The Per Diem, Travel and Transportation Allowance Committee (for uniformed service personnel) and the General Services Administration (for civilian employees) may issue regulations permitting reimbursement to travelers on an actual expense basis based on unusual circumstances when due to the infrequency of travel to a given location consideration was not given to designating that locality as within a high cost geographical area. Authorization or approval of actual expense reimbursement should be predicated upon advice from the Committee or the Administration, as appropriate, that the locality was not considered for inclusion in the list due to lack of information with respect thereto and will be applicable only to the specific travel under consideration.

2. Where travel is to an area that is not designated as a high cost geographical area but where the choice of accommodations are limited or the costs of accommodations are inflated because of conventions, sports events, natural disasters, or other causes which reduce the number of units available, such events may be considered as unusual circumstances of the travel assignment which would permit payment of expenses to an employee or member on an actual expense basis depending upon the circumstances of each case and the necessity and nature of the travel.

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3. General designation of a high rate geographical area may not be made retroactively even though the existence of normal high costs sufficient to warrant such a designation was unknown to the Per Diem, Travel and Transportation Allowance Committee prior to the performance of travel in any individual case and such facts are thereafter made known. 32 Comp. Gen. 315 (1953).

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The Assistant Secretary of the Navy (Manpower, Reserve Affairs and Logistics) has requested a decision on payment of military and civilian travel allowances on an actual expense basis under unusual duty assignments. Specifically, we have been asked the following questions:

TDY

(1) Where travel on temporary duty is to a place not designated as a high cost geographical area and the prescribed per diem on the lodging plus basis is inadequate due to the lack of availability of lower priced accommodations in the immediate area of the TDY, may such circumstances be considered to be unusual thereby warranting authorizing payment of actual expenses for unusual circumstances of the travel assignment?

(2) Where travel is to an area that is not designated as a high cost geographical area but where the choice of accommodations is limited or the costs of accommodations are inflated because of conventions, sports events, natural disasters, or other causes which reduce the number of units available below the normal levels, may such events be considered as unusual circumstances of the travel assignment which would permit payment of expenses to an employee on an actual expense basis?

(3) May the designation of a high rate geographical area be made retroactively when the existence of normal high costs sufficient to warrant such a designation

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was unknown to the Per Diem, Travel and Transportation Allowance Committee prior to the performance of travel in any individual case and such facts are thereafter made known?

In answer to question (1), applicable regulations may be changed to permit use of the authority to pay actual expenses in unusual circumstances so as to permit payment on that basis when travel is performed to localities which have not been designated as high cost geographical areas because of the infrequency of travel to those areas. Question (2) is answered affirmatively since, under established criteria unusual circumstances at the location of temporary duty have been demonstrated. The answer to question (3) is in the negative under the general rule that regulations may not be altered retroactively.

The Assistant Secretary points out that although more than 90 locations have been designated as high cost geographical areas, cases continue to arise in which travel is required to an area which could be designated as a high cost area but because of a lack of experience in travel to that place such a designation has not been made.

The issues presented in questions (1) and (2) were in essence addressed in 55 Comp. Gen. 609 (1976). While that decision only dealt with civilian employees' entitlements under 5 U.S.C. 5702(c), as amended by Public Law 94-22, 89 Stat. 84, the reasoning therein is equally applicable to members of the uniformed services whose travel entitlements in this regard are governed by 37 U.S.C. 404(d).

Public Law 94-296 amended 37 U.S.C. 404(d) relating to travel to a high cost area to the same extent that Public Law 94-22 amended 5 U.S.C. 5702(c). Further, authority for travel involving "unusual circumstances", was contained in the 1975 amendments enacted in Public Law No. 94-22 and Public Law No. 94-296. Under both laws the regulating authority (the General Services Administration, in case of civilians, and the Secretaries concerned, in case of the uniformed services) may prescribe the conditions for reimbursing actual expenses when the per diem allowances are inadequate due to unusual circumstances of

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the travel assignment. We stated in 55 Comp. Gen. 609, supra, in this connection:

"* * * nothing in the law or its legislative history would preclude the General Services Administration from appropriately modifying the travel regulations by changing the criteria for or citing additional examples of unusual circumstances, either on its own initiative or at the request of an agency."

Because of the similarity of the laws and regulations, the quoted statement is applicable to regulations issued by the Secretaries concerned in the case of the uniformed services.

In 42 Comp. Gen. 440 we held that a system similar to the high cost geographical area system which is now authorized by law could not be implemented by regulation under the authority to pay actual expenses in unusual circumstances. We said that general inflation in costs could not be the basis for holding that travel was performed under unusual conditions. In other words, Congress has fixed a limit on per diem and that limit may not be exceeded because inflation has made per diem inadequate to cover costs of travel in certain areas. It is the prerogative of Congress to establish such a limit and once established it must be enforced.

Since that time Congress enacted the high cost geographical area authority thus permitting the executive to fix reimbursement at higher rates for employees who are required to travel to areas when, because of inflation or otherwise, the costs have risen above that which may ordinarily be covered by the maximum per diem authorized.

When this new authority is viewed in light of the authority which the regulatory authorities have--as stated in 55 Comp. Gen. 609--it appears that authorization of

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actual expense reimbursement under the unusual circumstance authority would be proper--under appropriate regulations--when for some reason a high cost geographical area has not been included on the list contained in the regulations or when, due to the absence of current information, the maximum actual expense reimbursement for a certain location is substantially below that required to cover costs necessarily incurred. The Congress has provided for covering the costs of employees traveling to high cost areas and it must be presumed that the regulatory agencies can properly implement this authority. When circumstances are such that a high cost geographical area cannot be timely identified, the situation may be viewed as unusual and the authority relating to unusual circumstances may be applied.

If regulations are issued they should require the General Services Administration for civilian travel and the Per Diem, Travel and Transportation Allowance Committee for travel by members of the uniformed services to verify in each case that the locality involved had not been considered for inclusion in the list of high cost geographical areas. If facts were not available to the order-writing official prior to travel to permit a request for authorization the Administration or Committee as appropriate could approve reimbursement on a retroactive basis as is currently authorized in the regulations covering the payment of actual expenses in unusual circumstances.

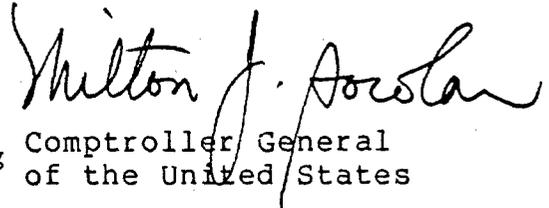
The regulations may be amended to cover the unusual circumstances such as travel to an area where a natural disaster or other cause reduces the number of available units or where costs of food or accommodations are inflated due to a special occurrence at the TDY site and such rates would not be so inflated during normal times. Such unusual circumstances should be considered on a case-by-case basis and judged against the necessity and nature of the travel at the particular time.

Questions one and two are answered accordingly.

We have long and consistently adhered to the rule that when regulations are properly issued, rights thereunder become fixed and, although such regulations may be

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amended prospectively to increase or decrease rights given thereby, they may not be amended retroactively except to correct obvious errors. 32 Comp. Gen. 315 (1953); 32 id. 527 (1953); 33 id. 174 (1954); 40 id. 242 (1960); and 47 id. 127 (1967). Compare 33 Comp. Gen. 505 (1954), and Friedlander v. United States, 120 Ct. Cl. 4 (1951). Therefore, question number three is answered in the negative.



Acting Comptroller General
of the United States