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DECISION

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

[Request for Reimbursement of Subsistence Expenses]

FILE: B-198775 DATE: April 16, 1981

MATTER OF: Robert A. Jacobsen - Meal Expenses on Travel - Reasonableness

DIGEST:

1. Employee on temporary duty assignment to New York City who was authorized actual subsistence expenses claimed reimbursement of dinner expense. Agency determined this expense was not prudently incurred and disallowed entire amount of employee's dinner expense. Total disallowance was improper because agency has duty in first instance to determine what constitutes a reasonable amount for meal expenses. Dinner voucher is returned for agency action. When agency makes that determination, we will not overturn it unless its determination is clearly erroneous, arbitrary, or capricious.

2. Employee on temporary duty travel who was authorized actual subsistence expenses claims breakfast expense incurred in returning home. Breakfast expense is not necessary expense of official travel prudently incurred when employee, instead of having breakfast meal ~~at home~~ at customary time, elects on basis of personal preference to purchase meal at train station at 12:30 a.m. while still in travel status.

This decision is in response to the request of E. B. Kirkpatrick, the Accounting and Finance Officer for the Defense Investigative Service, Department of Defense, Washington, D.C. Mr. Kirkpatrick's inquiry relates to an expense voucher submitted by Mr. Robert A. Jacobsen, an employee of the Defense Investigative Service, which requests reimbursement of subsistence expenses incurred by Mr. Jacobsen while he was on temporary duty in New York City, New York.

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On July 18, 1979, Mr. Jacobsen, whose permanent duty station was Washington, D.C., was assigned to perform temporary duty in New York City, commencing July 22, 1979. Pursuant to his travel authorization, Mr. Jacobsen was paid $100 in advance of his departure to New York, and was informed that his subsistence expenses should be submitted within 5 days of the completion of his travel. Because New York City is classified as a high cost geographical area for travel purposes, Federal Travel Regulation (FTR) (FPMR 101-7, May 1973) as amended in par. 1-8.6, Temp. Reg. A-11, dated May 19, 1975, Mr. Jacobsen was authorized to obtain reimbursement for his actual subsistence expenses up to the maximum allowable rate of $50 per day. On July 22, 1979, Mr. Jacobsen departed from Union Station, Washington, D.C., and arrived by train at Penn Station, New York City, at 12:30 p.m. the same day. His voucher for that day indicates that he spent $7.81 for lunch and $10.31 for dinner. On July 23, 1979, Mr. Jacobsen completed his assignment and departed from Penn Station at 6:30 p.m. and arrived at Union Station in Washington, D.C., at 12:30 a.m. on July 24, 1979. For July 23, 1979, Mr. Jacobsen purchased a breakfast for $4.25, and spent $23 for dinner. On July 24, 1979, upon arrival at Union Station in Washington, D.C., Mr. Jacobsen purchased a breakfast at a cost of $3.50, and subsequently traveled by private automobile to his residence in Upper Marlboro, Maryland, arriving at 2:15 a.m.

By voucher dated July 24, 1979, Mr. Jacobsen filed a claim for reimbursement of his subsistence expenses. Upon review of his claim by the Accounting and Finance Officer, the claim representing the dinner meal purchased on July 23, 1979, for $23 and the entire amount of the $3.50 breakfast purchased on July 24, 1979, was disallowed on the basis that these expenditures were not incurred with the same care and prudence that a person on personal business would exercise. However, Mr. Jacobsen contends that he incurred these expenditures with the same care and prudence as if he had been conducting his personal affairs. Both parties have requested that this matter be submitted to this Office for guidance.

Mr. Jacobsen contends that the dinner expense was not extravagant by New York standards. He further indicates that the breakfast expense was incurred as a result of the delayed arrival of his train at Union Station, at which time (12:30 a.m.) he was hungry and felt that the regulations were sufficiently flexible to allow for this type of expense.

Pursuant to section 5702(c) of title 5, United States Code (1976), and the implementing Federal Travel Regulations promulgated by the Administrator of General Services (FPMR 101-7, May 1973), as amended (FPMR Temp. Reg. A-11, dated May 19, 1975), an agency is authorized to reimburse employees for the actual and necessary expenses of official travel where the employee travels to a high cost geographical area. FPMR Temp. Reg. A-11, par. 1-8.1. However, the FTR also provides that an employee traveling on official business is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business. (FPMR par. 1-1.3(a), May 1973.) Furthermore, par. 1-1.3(b) of the FTR states that reimbursable traveling expenses are limited to those expenses essential to the transacting of the employee's official business. In consonance with the above, the Director of the Defense Investigative Service notified its employees by memorandum dated June 9, 1977, that:

> "* * * Travelers are not automatically entitled to be reimbursed at the designated rates (for high cost geographical locations) but only for actual and necessary expenses incurred up to but not exceeding those rates. They are required to act prudently in incurring expenses and are entitled to reimbursement for only reasonable expenses."

The Director's memorandum added that action would be taken to contest the cost of claims determined to be unreasonable.

The Defense Investigative Service predicates its denial of Mr. Jacobsen's breakfast expense and its determination that $23 was an unreasonable amount for the dinner expense on the Director's memorandum of June 9, 1977. The agency's denial was further premised on the decision of this Office in Norma J. Kephart, B-186078, February 23, 1978, wherein we stated that employees are entitled only to reasonable expenses for meals and that the employing agency has the initial responsibility for determining the reasonableness of such expenses. Because no such determination had been made in that case, we returned the voucher to the agency for a determination on the issue of a reasonable amount for meals and miscellaneous expenses.

The same action will be taken in the present case. The Defense Investigative Service's disallowance of the total dinner cost was improper because Mr. Jacobsen was entitled to a reasonable amount for dinner. As in Kephart, the agency here has a duty in the first instance to determine the reasonableness of meal expenses. Once that is done by the agency, this Office will not substitute its judgment for that of the agency in the absence of evidence that the agency's determination is clearly erroneous, arbitrary, or capricious. 55 Comp. Gen. 1107, 1110 (1976); Norma J. Kephart, supra.

We are informally advised that the Defense Investigative Service recently notified its employees that it has adopted internal guidelines governing the reimbursement of employee expenses for meals and miscellaneous expenses in high cost geographical areas. In Kephart, we recommended that the employing agency consider its authority under FTR par. 1-8.3b (FPMR Temp. Reg. A-11, Supp. 4) to issue such guidelines to serve as a basis for review of an employee's expenses. On the basis of additional experience since Kephart, we adhere to that recommendation and believe that the newly promulgated

policy of the agency will help to avoid or minimize the type of conflict that arose in this case.

Turning to Mr. Jacobsen's breakfast expense, we conclude that the agency's determination to disallow the expense was proper. The meal occurred at approximately 12:30 a.m. on July 24, 1980, many hours prior to the time this meal is customarily consumed, and at a time when Mr. Jacobsen was approximately 1 hour away from his residence.

In our decision Roscoe L. Simmons, B-189622, March 24, 1978, an employee stationed at Ft. Meade, Maryland, claimed reimbursement for a dinner meal which he purchased at the Baltimore-Washington International Airport before completing the final portion of his return trip to his residence in Columbia, Maryland. In disallowing the employee's claim we held that his election to purchase a dinner at the airport instead of eating when he was at home was a purely personal choice, dictated in part by his preference as to the time of eating. We determined, therefore, that the expense could not be characterized as a necessary expense of official travel essential to transacting official business and was not reimbursable.

In our view, the Simmons' case is controlling with respect to the breakfast expense at issue here. Mr. Jacobsen's decision to purchase breakfast upon his arrival at the airport at 12:30 a.m., rather than wait to eat at the customary breakfast time when he would have been at home, was one based upon personal preference and not necessitated by the circumstances of his official travel. Therefore, there is no basis upon which we may grant his claim for reimbursement of this expense. See Bennie L. Pierce, B-185826, May 28, 1976.

Accordingly, Mr. Jacobsen's voucher is returned to the Defense Investigative Service for a determination as to the amount of the reasonable expense of the dinner in question. Mr. Jacobsen's claim for the breakfast expense disallowed by the agency may not be paid.

Shelton J. Roolan

Acting Comptroller General
of the United States