



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20541

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B-177491

June 21, 1973

Mr. Peter E. Sliman
2015 6th Avenue
Lot No. 112A
Clarkston, Washington 99403

Dear Mr. Sliman:

We refer to your letter of April 11, 1973, requesting review and reconsideration of a settlement by our Transportation and Claims Division dated April 3, 1973, that disallowed your claim for additional per diem allowance for the period August 29, 1972, through January 16, 1973.

You are a substation construction inspector employed by the Bonneville Power Administration (BPA), United States Department of the Interior. That agency assigned you to temporary duty at Clarkston, Washington, effective July 19, 1971, and you moved your family there on August 16, 1971, and established a residence in a mobile home where you presently live. You continued to work within commuting distance of your residence except for short temporary assignments away from your home and family.

After you had resided in Clarkston for a year BPA disallowed your claim for additional per diem expenses on the basis that Clarkston, Washington, had become your permanent residence, and in any event agency policy as set forth in paragraph 233.6f of the BPA Manual (BPAM), precludes per diem payments for a period longer than one year of continuous temporary duty at one place without agency approval, which was not granted in your case.

You contend that the aforementioned BPA policy serves to discriminate against employees like yourself who choose to live with their families in mobile homes near their worksites and favors employees who leave their families at distant locations and live in small travel trailers or commercial lodging facilities near their work. This latter class of employees, you maintain, receives continuous per diem allowances by virtue of short assignments away from their primary worksites that interrupt the one-year time limitation, while the former class receives per diem allowances for only the initial one-year period. In this connection you have requested this Office to rule on the legality of this agency policy.

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Authority for per diem allowances is contained in 5 U.S.C. 5701-5709. In accordance with 5 U.S.C. 5707, implementing regulations governing this allowance have been promulgated in section 6.1 et seq., of the Standardized Government Travel Regulations (SGTR). Section 6.6 is pertinent to the issue raised by you and provides:

6.6 Per diem computation rules. a. No allowance at permanent duty station. Per diem in lieu of subsistence will not be allowed an employee either at his permanent duty station or at his place of abode from which he commutes daily to his official station. If a temporary assignment at a particular place is prolonged beyond a period of 30 days, travel vouchers submitted before return should state the approximate period to be covered by his duty assignment at such place, or the approximate date of return to official headquarters, or both, as well as any other pertinent facts which will tend to show that his duty at such place is of a temporary nature.

You will note that this regulation specifically precludes payment of a per diem allowance to an employee who commutes daily from his place of abode to his duty station. A per diem allowance is designed to reimburse a traveling employee for having to eat in hotels and restaurants, and for having to rent a room in another city while still maintaining his own table and his own permanent place of abode. It is supposed to cover the extra expenses incident to traveling. Bornhoft v. United States, 137 C. Cls. 134 (1956). It has consistently been the view of our Office that an employee assigned to temporary duty near the primary residence from which he ordinarily commutes to work generally incurs none of the extra expense for which per diem is intended to provide reimbursement. See 21 Comp. Gen. 697 (1942) and 31 id. 264 (1952). Also see copies herewith of unpublished decisions B-125720, December 15, 1955; B-146029, July 24, 1961; B-152216, August 20, 1963; B-158577, March 25, 1966; and B-164673, October 22, 1968. We recognize, however, that when an employee maintains more than one residence, one in proximity to his permanent duty station and another near his temporary duty station, he may incur such additional expenses as will justify a per diem allowance. In accordance with the above-quoted section 6.6, SGTR, however, such instances are generally restricted to cases wherein an employee maintains near the place of temporary duty a home which is not the abode from which he regularly commutes to work at his official headquarters. 35 Comp. Gen. 554 (1956).

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Inasmuch as you maintain only one residence, your mobile home, from which you daily commute to work, you do not have the burden of additional expenses for the maintenance of a second home. On the other hand, employees who continuously live in travel trailers or commercial lodgings apart from their families while on temporary duty have additional expenses. The per diem allowance was designed to reimburse employees only for their additional expenses.

On this basis we are of the opinion that EPA travel policies which would allow per diem payments to employees who live in travel trailers or commercial lodgings apart from their families and deny such allowances for employees who have established their primary residences at or near their worksite and commute daily, are entirely consistent with the law and regulations governing travel and subsistence expenses as expressed in 5 U.S.C. 5701-5709 and section 6, SGFR.

Accordingly we are of the opinion that there is a valid basis for the distinction or discrimination drawn by EPA travel policies. Consequently the discrimination is neither arbitrary nor capricious so as to be legally impermissible. Hagler v. Finch, 451 F. 2d 45 (1971); Thomas v. Government of Virgin Islands, 333 F. Supp. 961 (1971).

In view of the foregoing denial of additional per diem expenses by our Transportation and Claims Division was proper and is hereby sustained.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States