



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Dimitri & Eugenia Arensburger—Temporary Duty—Overseas
Location—Per Diem

File: B-257926.2

Date: October 2, 1996

DIGEST

1. An employee of the Department of State owns a residence at his permanent duty station in Washington, D.C., and also owns a residence in Geneva, Switzerland. Whenever he performed temporary duty travel to Geneva, he occupied the residence there. He is entitled to transportation to and from Geneva, and the meals and incidental expenses portion of per diem, but not the lodging portion of per diem where he did not incur any lodging costs in excess of the usual expenses of maintaining his residence there.
2. An individual employed as a contract interpreter by the Department of State on an as required basis has no official station other than her residence. Therefore, for the purposes of the Federal Travel Regulation, currently 41 C.F.R. § 301-1.3(c)(4) (1995), her residence at the time she received an assignment is the equivalent of her official station.
3. An individual employed as a contract interpreter by the Department of State on an as required basis owns a residence in the Washington, D.C., area, and also owns a residence in Geneva, Switzerland. When she performed an assignment in Geneva, she occupied the residence there. When assigned to Geneva while residing in the Washington, D.C., area, she is entitled to transportation to and from Geneva, the meals and incidental expenses portion of per diem, but not the lodging portion of per diem where she did not incur any lodging costs in excess of the usual expenses of maintaining the residence there. However, when she was living at her residence in Geneva upon receiving an assignment, her Geneva residence became her official station for the purpose of that assignment; therefore, she is not entitled to per diem while on that assignment in Geneva nor to any transportation at government expense between Geneva and Washington at the completion of that Geneva assignment.

DECISION

This decision responds to a request from the Acting Inspector General of the United States Arms Control and Disarmament Agency (ACDA).¹ The issue is whether two individuals who own a residence at a temporary duty location overseas and resided there while performing that duty, are entitled to per diem. As discussed below, partial per diem may be paid in certain circumstances.

BACKGROUND

Mr. Dimitri Arensburger, a staff interpreter employed in the Language Services branch of the Department of State, is officially stationed in Washington, D.C. His wife, Mrs. Eugenia Arensburger, is employed as a contract interpreter with the same branch of the Department of State; but, since she is not a regular employee of the federal government, she has no official duty station.

Mr. and Mrs. Arensburger own a residence in the Washington area, which they purchased in 1977. They also own a residence in Geneva, Switzerland, which they purchased in 1978. Whenever either or both of them receive an assignment in Geneva, they occupy their residence in Geneva.

When Mr. Arensburger received a temporary duty assignment to Geneva, his travel would usually begin at Washington, D.C., his permanent duty station, but that was not necessarily the case with Mrs. Arensburger. When her services as a contract interpreter were required in Geneva, she occasionally began her assignment travel from her residence in the Washington, D.C. area. However, there were other times when Mr. Arensburger traveled to Geneva on official business that she simply accompanied him at personal expense. After they arrived in Geneva, and occupied their residence there, occasionally she was asked to serve as an interpreter in Geneva under her basic ordering agreement with the Department of State.

During the period October 1, 1986, to September 30, 1990, Mr. and Mrs. Arensburger were on assignment in Geneva 7 times and 6 times, respectively, and submitted 13 travel vouchers claiming the maximum per diem authorized for Geneva. Each of these vouchers was approved and payment was made to the Arensburgers. Of the amount paid, approximately \$33,000 represented the lodging portion of the per diem for Geneva, even though Mr. and Mrs. Arensburger were living in their own residence there.

¹Mr. John C. Payne

The question raised is whether Mr. and Mrs. Arensburger are entitled to full per diem while on assignment in Geneva. In this regard, the ACDA advises that in 1983, a question was raised in the Department of State concerning the entitlement of a contract interpreter to receive per diem while on assignment where the location of the assignment is at or near the individual's residence. A legal opinion dated January 17, 1983, prepared by the Office of the Legal Advisor, Department of State, concluded that an individual who is under contract with the Department of State and who resides at the location of his/her assignment, even at an overseas location, is not entitled to per diem because he or she did not have to perform travel beyond the commuting distance from that residence. By memorandum dated May 26, 1993, Mr. A. Richard Richstein, ACDA Office of General Counsel, concluded that the earlier position expressed in the Department of State legal opinion was proper.

OPINION

Title I of Public Law 99-234², amended 5 U.S.C. § 5702 (1988) to establish the type of reimbursement system to be used by federal agencies for all travel by federal employees within and outside CONUS, including foreign areas. Pursuant to that authority, Part 1-7 of the Federal Travel Regulations (FTR)³ was amended in part to establish a worldwide per diem system as the predominant travel reimbursement system.

Section 1-7.2c of the FTR⁴ provided that, for civilian travel to foreign areas outside the United States and its possessions, the per diem rate may not exceed the rate prescribed in the Standardized Regulations (Government Civilians, Foreign Areas). Reductions in those rates were authorized under section 1-7.7 of the FTR⁵ to insure that the per diem paid is not in excess of that required to meet the employee's necessary subsistence expenses. The rule is currently stated in 41 C.F.R. § 301-7.12 (1995), as follows:

²99 Stat. 1756, Jan. 2, 1986.

³FTR Supp. 20, May 30, 1986, Incorp. by ref., 41 C.F.R. § 101-7.003 (1986). See also FTR Supp. 24, July 15, 1987, for travel performed on or after August 1, 1987, and 41 C.F.R. Part 301-7 (1989) for travel performed on or after May 10, 1989.

⁴See 41 C.F.R. § 301-7.3(c) (1995), for travel performed on or after May 10, 1989.

⁵See 41 C.F.R. § 301-7.7, for travel performed on or after May 10, 1989, currently found at 41 C.F.R. § 301-7.12 (1995).

"An agency may, in individual cases or situations, authorize a reduced per diem rate under certain circumstances such as when . . . the per diem costs to be incurred by the employee can be determined in advance. In exercising its responsibilities outlined in § 301-7.2(b), the agency should consider any known factors that will cause the traveler's per diem expenses in a specific situation to be less than the applicable maximum rates"

The FTR provision in § 301-7.2(b), cited in the above quotation, provides that it is the involved agency's responsibility to allow per diem only as justified by the circumstances and to consider known arrangements showing that lodging at the temporary duty location can be obtained without cost, particularly where repetitive travel or extended stays are involved. With regard to extended stays, FTR para. 1-7.7c⁶ specified that when lodging or meals can be obtained at a lower cost, "the per diem rate should be reduced accordingly."

In Bornhoft v. United States, 137 Ct. Cl. 134 (1956), the Court of Claims held that the only subsistence expenses incurred by an employee that properly may be reimbursed are those expenses which are incurred by reason of travel and are in addition to the usual cost of maintaining the employee's own table and place of abode. Thus, where an employee travels to a temporary duty location where he or she owns a residence and stays in that residence while performing temporary duty, we have uniformly denied reimbursement for lodging expenses.⁷

In Mr. Arensburger's case, it appears that he began his temporary duty assignments to Geneva from his official duty station, Washington, D.C. Based on our decisions, therefore, he is entitled to transportation to and from Geneva, and the meals and incidental expense (M&IE) portion of his per diem, but he is not entitled to the lodging portion of per diem for any day he stayed in his residence in Geneva while performing temporary duty there.

As to Mrs. Arensburger, she is not a federal employee. She is under contract with the Department of State to provide interpreter services on an as required basis. Article 1 of the additional terms and conditions of her "Basic Ordering Agreement," specifies that she is an independent contractor and, thus, for the purposes of her entitlement to per diem, she has no official duty station, as that term is defined in

⁶See 41 C.F.R. § 301-7.7(c) for travel performed on or after May 10, 1989, currently found at 41 C.F.R. § 301-7.12(b) (1995).

⁷Sanford O. Silver, 56 Comp. Gen. 223 (1977); Burney P.C. Boote, B-189623, Mar. 2, 1981; Danny Sarine, B-201894, Feb. 23, 1982; Durel R. Patterson, B-211818, Feb. 14, 1984. Cf. James H. Quiggle, B-192435, June 7, 1979.

FTR para. 1-1.3c(1).⁸ Therefore, for the purpose of the travel regulations, the place where she resides when she receives her assignments is the equivalent of her official station.

Article 5 of the additional terms and conditions to her agreement states further that, in the event that the Contractor is required to travel beyond commuting distance from the area of her residence in connection with the services contracted for under the agreement, travel shall be allowed in accordance with the Standardized Government Travel Regulations, as amended, and per diem shall not exceed the maximum allowable under those regulations. Article 5 further provides that, when on assignment outside the continental United States, the contractor will be allowed the established per diem rate prescribed for the area in the Standardized Regulations (Government Civilians, Foreign Areas), if such rate is higher than the rate otherwise authorized for the assignment.

This authorization is subject to the same limitations and restrictions applicable to government employees traveling under the same circumstances. Therefore, when Mrs. Arensburger received an assignment to Geneva while living in her residence in the Washington area, her basic travel, transportation and per diem entitlement is subject to the same limitations as those applicable to Mr. Arensburger. However, if she was living in her residence in Geneva when she received an assignment there, her Geneva residence became her official station for the purpose of that assignment and she is not entitled to per diem while on that assignment nor to any transportation at government expense between Geneva and Washington at the completion of such assignment.

/s/Seymour Efros
for Robert P. Murphy
General Counsel

⁸Incorp. by ref., 41 C.F.R. § 101-7.003(1981). See 41 C.F.R. § 301-1.3(c)(4) for travel on or after May 10, 1989.