



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: George E. Sims

File: B-260780

Date: July 16, 1996

DIGEST

Payment may be made to the employee for his dependents' per diem for the period in Hawaii from July 13 through July 17, 1993, while en route from the old duty station in Albuquerque, New Mexico, to the new duty station in the Kwajalein Atoll, Marshall Islands, pursuant to the employee's permanent change of station. The delay in Hawaii was beyond the control of the employee, was not for his personal convenience, and the employee acted as a prudent person would have acted under the same circumstances.

DECISION

This advance decision is made at the request of John F. Best, an authorized certifying officer, U.S. Army Corps of Engineers, Department of the Army, to determine whether he may certify for payment certain travel expenses, including per diem, for the family of a civilian employee of the U.S. Army Corps of Engineers, Mr. George E. Sims. Mr. Sims' family traveled concurrently with him in connection with his permanent station from Albuquerque, New Mexico, to Kwajalein Atoll, Marshall Islands, in 1993.

BACKGROUND

Mr. Sims' travel orders gave him authorization to travel concurrently with his wife and four dependent children (ages 9, 6, 3, and 1). Concurrent travel was in accordance with United States Army Kwajalein Atoll Regulation 210-10, USASDC, 21 October 1986, which states that family members may enter Kwajalein without prior approval only when accompanied by the sponsor and travelling on official orders.

The employee and his family arrived in Honolulu, Hawaii, on Tuesday afternoon, July 13, 1993, so that the employee could "in-process" for 2 days at Fort Shafter, a requirement before entering Kwajalein. The employee's spouse and dependents stayed in Hawaii during this time, planning to depart on the next available U.S. military flight for Kwajalein on Friday morning, July 16. Due to mechanical

problems, this flight returned to Hickam Air Force Base in Honolulu three separate times before arriving in Kwajalein at 10:45 p.m. on the evening of July 17.

The certifying officer asks whether Mr. Sims may receive per diem for his spouse and dependent children from July 13 through July 17 for their stay in Hawaii while en route to his permanent station in Kwajalein. Mr. Sims' request for per diem for his spouse and dependents was denied by the agency on the basis that per diem for dependents is limited to that allowable for uninterrupted travel by the authorized route between the old and new duty stations. As a result, per diem for the interrupted stay in Hawaii was considered in excess of the constructive travel time and was denied for the dependents.

ANALYSIS

The payment of travel and transportation expenses of transferred government employees and their dependents is authorized under 5 U.S.C. § 5724a, as implemented by the Joint Travel Regulations (JTR). Paragraph C7000 of the JTR provides that travel and transportation expenses of dependents at government expense may be authorized or approved in connection with permanent duty travel of the employee concerned. Per diem, which is a daily allowance for lodging, meals, and related incidental expenses, is limited for dependents to that allowable for uninterrupted travel by the authorized mode over a usually traveled route between the old and new duty stations. The issue in this matter is whether the dependents' layover in Hawaii can be considered part of "uninterrupted travel" over a usually traveled route so that they would be entitled to per diem during their stay there from July 13 through July 17.

In the case of Hank Meshorer, 68 Comp. Gen. 37 (1988), a transferred employee traveled to his new duty station by an indirect route to avoid a severe heat wave. His claim for per diem associated with that route was remanded to the agency to consider whether the indirect route was acceptable to the agency based on the following criteria: (1) whether the cause of the delay was beyond the control of the employee, (2) whether the delay was for the employee's personal convenience, and (3) whether circumstances revealed that the employee acted as a prudent person would have acted under the same circumstances.¹

¹See also Robert T. Bolton 62 Comp. Gen. 629 (1983), where an employee was granted additional per diem due to the breakdown of his mobile home en route to his new duty station, and Thomas S. Swan, Jr. 64 Comp. Gen. 173 (1984), where an employee whose automobile broke down en route to his new duty station was allowed additional per diem for the delay deemed beyond his control and acceptable to the agency.

Applying these criteria to the case at hand, the delay was the result of the employee spending 2 days "in-processing" in Hawaii, a necessary condition precedent for a permanent change of station to the Kwajalein Atoll, and another delay of approximately a day and a half because of mechanical difficulties with the airplane. Since the 2-day delay for "in-processing" was administratively considered and approved as being officially necessary and on government business, and the second delay for mechanical difficulties with the airplane was clearly beyond the control of the employee, the first criteria for the reimbursement for per diem for the employee's dependents is met.

Regarding the second criteria, neither the "in-processing" nor the delay due to the airplane's mechanical troubles were for the personal convenience of the employee. Concurrent travel was not only authorized, but was strongly encouraged by the Army. The employee was "in-processing" in Hawaii prior to his assignment in Kwajalein, as directed in his travel orders, and the delay was beyond the employee's control.

In the case of Kiyoji Tomita, B-180736, June 18, 1974, we held that, although Mr. Tomita's family traveled by an indirect route via Hawaii to the Kwajalein Atoll incident to the employee's permanent change of station and incurred additional expenses by their delay, the authorized certifying officer may certify for payment a travel voucher for 15 days per diem for the employee's family since the indirect travel and delay was caused by the government, was beyond the control of the employee, and was not for his personal convenience.

Finally, the employee appears to have acted prudently under the circumstances, the third criteria. By traveling with his spouse and four children under the age of 10 during a permanent change of station, the employee was in a position to assist them with the travel that involved not only changes in airlines, but, because of the relationship of the separate airlines with each other, hand carrying 15 pieces of luggage between terminals in Los Angeles. When unexpected mechanical difficulties arose, necessitating boarding and reboarding the aircraft in Hawaii four separate times, the prudence of concurrent travel where two adults were available to direct and supervise four young children became obvious.

As provided in C7006 of the JTR, when the spouse accompanies the employee, the spouse is authorized three-fourths of the per diem rate to which the employee is entitled and each member of the employee's immediate family under the age of 12 is authorized one-half of the per diem rate to which the employee is entitled. Further, the per diem rate for Hawaii, is the applicable rate.

Accordingly, we do not object to certification for payment to the employee of his dependents' per diem for the period in Hawaii from July 13 through July 17, 1993,

while en route from the old duty station in Albuquerque, New Mexico, to the new duty station in the Kwajalein Atoll pursuant to the employee's permanent change of station.

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