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MEALS - HEADQUARTERS DIGEST: A CUSTOMS PATROL OFFICER ON AN EXTENDED SURVEILLANCE ASSIGNMENT AT HIS HEADQUARTERS, WHO WAS REQUIRED TO REMAIN IN A MOTEL ROOM FOR SEVERAL DAYS, MAY NOT BE REIMBURSED FOR MEAL EXPENSES. ABSENT SPECIFIC STATUTORY AUTHORITY OR EXIGENT CIRCUMSTANCES INVOLVING DANGER TO HUMAN LIFE OR THE DESTRUCTION OF FEDERAL PROPERTY, THE GOVERNMENT MAY NOT PAY THE SUBSISTENCE EXPENSES OR FURNISH FREE FOOD TO EMPLOYEES PERFORMING DUTY AT THEIR HEADQUARTERS.

CUSTOMS PATROL OFFICER - MEAL EXPENSES AT HEADQUARTERS:

MR. G.B. HODDINOTT, DEPUTY ASSISTANT REGIONAL COMMISSIONER (FINANCIAL MANAGEMENT), UNITED STATES CUSTOMS SERVICE, MIAMI, FLORIDA, HAS REQUESTED OUR OPINION CONCERNING THE PROPRIETY OF REIMBURSING THE MEAL EXPENSES OF A CUSTOMS PATROL OFFICER ON AN EXTENDED, UNSCHEDULED SURVEILLANCE ASSIGNMENT AT HIS PERMANENT DUTY STATION. THE AGENT WAS REQUIRED TO REMAIN IN A MOTEL ROOM FOR 2-3/4 DAYS, ALTHOUGH HE DID SPEND 3-1/2 HOURS DRIVING 225 MILES ON A ROUND TRIP OUTSIDE OF THE LOCAL COMMUTING AREA. PAYMENT FOR THE MOTEL ROOM WAS NOT REQUIRED OF THE AGENT. ALTHOUGH THE FEDERAL TRAVEL REGULATIONS PRECLUDE THE PAYMENT OF SUBSISTENCE EXPENSES AT AN EMPLOYEE'S PERMANENT DUTY STATION, MR. HODDINOTT CONTENDS THAT, ASSUMING THAT FOOD WAS EITHER PURCHASED AND BROUGHT TO THE AGENT OR WAS ORDERED FROM ROOM SERVICE, REIMBURSEMENT FOR MEALS IS JUSTIFIED. FOR THE REASONS SET FORTH BELOW, WE HOLD THAT PAYMENT OF MEAL EXPENSES IS NOT PROPER.

IT IS WELL ESTABLISHED THAT THE GOVERNMENT MAY NOT PAY, IN ADDITION TO AN EMPLOYEE'S REGULAR COMPENSATION, THE SUBSISTENCE EXPENSES OF OR FURNISH FREE FOOD TO CIVILIAN EMPLOYEES AT HEADQUARTERS WITHOUT SPECIFIC AUTHORITY OF LAW, EVEN THOUGH THEY MAY BE WORKING UNDER UNUSUAL CONDITIONS. COMP.GEN. 149 (1962). WE HAVE BASED THE PROHIBITION ON PAYMENT OF SUBSISTENCE EXPENSES OR PER DIEM UPON PARAGRAPH 1-7.5A OF THE FEDERAL TRAVEL REGULATIONS, FPMR 101-7 (SEPTEMBER 1981) (FTR), WHICH PROVIDES THAT PER DIEM MAY NOT BE ALLOWED TO AN EMPLOYEE AT HIS PERMANENT DUTY STATION OR AT THE PLACE OF ABODE FROM WHICH HE/SHE COMMUTES DAILY TO THE OFFICIAL STATION. SEE BARTHOLOMEW L. AVERSANO, B-185923, NOVEMBER 8, 1976. /1/ WE HAVE BASED THE PROHIBITION ON FURNISHING FREE FOOD UPON THE PROVISION FOUND IN 5 U.S.C. SEC. 5536 (1982) THAT NO EMPLOYEE OF THE GOVERNMENT "UNLESS SPECIFICALLY AUTHORIZED BY LAW," SHALL RECEIVE ANY PAY OR ALLOWANCE IN ADDITION TO THAT PROVIDED BY STATUTE. SEE B-202104, JULY 2, 1981.

REGARDLESS OF THE BASIS USED, THE RESULT OF THE RULE IS THE SAME. APPLIED IT RECENTLY IN RONALD ERICKSON, B-213970, APRIL 4, 1984, TO DENY REIMBURSEMENT TO A NATIONAL PARK SERVICE EMPLOYEE FOR MEAL EXPENSES HE INCURRED WHILE ACCOMPANYING A TOURISM OFFICIAL OF A FOREIGN GOVERNMENT ON A TOUR THROUGH THE PARK. WE HAVE

RULED SIMILARLY IN SITUATIONS WHICH PARALLEL THE PRESENT ONE MORE CLOSELY. FOR INSTANCE, IN B-185159, DECEMBER 10, 1975, WE HELD THAT AN AGENT OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS COULD NOT BE REIMBURSED FOR THE COST OF FOOD HE PROVIDED TO HIS FELLOW AGENTS WHO WERE INVESTIGATING A BOMBING AND WERE UNABLE TO LEAVE THEIR POSTS. AND IN THOMAS R. SMITH, B-186090, NOVEMBER 8, 1976, WE HELD THAT A SPECIAL AGENT WITH THE U.S. CUSTOMS SERVICE WHO WAS DETAILED TO THE U.S. SECRET SERVICE COULD NOT BE REIMBURSED FOR MEAL EXPENSES INCURRED WHILE HE WAS ON A PROTECTIVE MISSION FOR 10 DAYS WITHIN THE CORPORATE LIMITS OF THE CITY IN WHICH HIS OFFICIAL DUTY STATION WAS LOCATED.

AS AN EXCEPTION TO THE GENERAL RULE WE HAVE AUTHORIZED GOVERNMENT PURCHASE OF MEALS FOR EMPLOYEES AT HEADQUARTERS BASED UPON FINDINGS THAT FURNISHING THESE MEALS WAS NECESSARY IN AN EXTREME EMERGENCY INVOLVING DANGER TO HUMAN LIFE OR DESTRUCTION OF FEDERAL PROPERTY. IN 53 COMP.GEN. 71 (1973) FOOD WAS PROVIDED TO FEDERAL PROTECTIVE SERVICES OFFICERS OF THE GENERAL SERVICES ADMINISTRATION (GSA) WHO WERE ASSEMBLED IN READINESS TO REOCCUPY A BUILDING OF THE BUREAU OF INDIAN AFFAIRS WHICH HAD BEEN TAKEN OVER BY FORCE. WE FOUND THAT A SITUATION OF EXTREME EMERGENCY "INVOLVING DANGER TO HUMAN LIFE AND THE DESTRUCTION OF FEDERAL PROPERTY," EXISTED WHICH JUSTIFIED THE CHARACTERIZATION OF THE EXPENSE AS "NECESSARILY INCIDENTAL TO THE PROTECTION OF PROPERTY OF THE UNITED STATES DURING AN EXTREME EMERGENCY." WE WENT ON TO STATE:

"HOWEVER, WHETHER PAYMENT OF SUCH EXPENSES WOULD BE PROPER IN SIMILAR CASES THAT MAY ARISE IN THE FUTURE WOULD NECESSARILY DEPEND ON THE FACTS AND CIRCUMSTANCES PRESENT IN EACH CASE, HAVING IN MIND THAT WORK IN OCCUPATIONS SUCH AS THOSE OF POLICEMEN, FIREMEN, SECURITY GUARDS, ETC., OFTEN IS REQUIRED TO BE PERFORMED UNDER EMERGENT AND DANGEROUS CONDITIONS AND THAT SUCH FACT ALONE DOES NOT WARRANT DEPARTURE FROM THE GENERAL RULE AGAINST PAYMENT FOR EMPLOYEES' MEALS FROM APPROPRIATED FUNDS. CONSEQUENTLY, AND SINCE SUCH CASES ARE RARE, WE DO NOT BELIEVE IT NECESSARY OR FEASIBLE TO ATTEMPT TO DESCRIBE HEREIN THE CIRCUMSTANCES UNDER WHICH SIMILAR PAYMENTS MAY BE DEEMED TO BE PROPER IN FUTURE CASES." 53 COMP.GEN. AT 75.

IN RICHARD D. ROGGE, B-189003, JULY 5, 1977, EMERGENCY FOOD SUPPLIES WERE PROVIDED TO FEDERAL BUREAU OF INVESTIGATION (FBI) EMPLOYEES WHO WERE STRANDED AND MAINTAINING THE ESSENTIAL FUNCTIONS OF THE BUFFALO OFFICE DURING A SEVERE BLIZZARD. WE ALLOWED THE FOOD EXPENSES TO BE PAID OUT OF APPROPRIATED FUNDS OF THE FBI BECAUSE "(THE EMERGENCY CONDITIONS CLEARLY PRESENTED 'DANGER TO HUMAN LIFE'."

IN B-202104, JULY 2, 1981, HOWEVER, WE FOUND THAT SECRET SERVICE AGENTS ON 24-HOUR-A-DAY PROTECTIVE DUTY ASSIGNMENTS COULD NOT BE PAID A DAILY ALLOWANCE TO COMPENSATE THEM FOR ADDED COSTS THEY INCURRED SINCE THEY WERE REQUIRED TO PURCHASE MEALS AT HIGH COST HOTELS. WE HELD THAT THE USUAL 24 -HOUR-A-DAY PROTECTIVE SERVICE DID NOT SATISFY THE EXTREME EMERGENCY SITUATION INVOLVING DANGER TO HUMAN LIFE CRITERION THAT IS NECESSARY TO FIT WITHIN THE EXCEPTION TO THE GENERAL RULE.

SIMILARLY, THERE IS NO INDICATION THAT THE ASSIGNMENT OF THE CUSTOMS PATROL OFFICER HERE INVOLVED THE TYPE OF EMERGENCY SITUATION NECESSARY TO BRING HIS CASE WITHIN THE PURVIEW OF OUR EXCEPTION TO THE GENERAL PROHIBITION AGAINST REIMBURSEMENT FOR SUBSISTENCE AT AN EMPLOYEE'S HEADQUARTERS. AS A RESULT, WE HOLD THAT HE MAY NOT BE REIMBURSED FOR ANY MEAL EXPENSES WHICH MAY HAVE BEEN INCURRED DURING THE SURVEILLANCE ASSIGNMENT AT ISSUE HERE.

/1/ ALTHOUGH THERE IS NO CORRESPONDING PROVISION WITH REGARD TO ACTUAL SUBSISTENCE EXPENSES, FTR PARA. 1-8.1 PROVIDES THAT REIMBURSEMENT OF ACTUAL EXPENSES IS DEPENDENT UPON ENTITLEMENT TO PER DIEM. IT IS CLEAR, THEREFORE, THAT ACTUAL EXPENSES INCURRED AT THE EMPLOYEE'S OFFICIAL STATION LIKEWISE MAY NOT BE REIMBURSED UNDER FTR CHAPTER 1, PART 8. SEE RICHARD WASHINGTON, B-185885, NOVEMBER 8, 1976.