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CIVILIAN PERSONNEL - TRAVEL - PERMANENT DUTY STATIONS - ACTUAL SUBSISTENCE EXPENSES - PROHIBITION DIGEST: AN EMPLOYEE WHO RENTED A ROOM IN THE VICINITY OF HER HEADQUARTERS RATHER THAN RETURNING TO HER HOME 30 MILES AWAY SEEKS REIMBURSEMENT FOR THE COST OF HER LODGING AND THE DINNER MEAL. HER SUPERVISOR DIRECTED HER TO RENT THE ROOM BECAUSE SHE WAS NEEDED THE NEXT DAY ON A TIME CRITICAL PROJECT AND A BAD WEATHER FORECAST THREATENED TO WORSEN AN ALREADY DIFFICULT TRANSPORTATION SITUATION. THE CLAIM MAY NOT BE ALLOWED SINCE EMPLOYEES MAY NOT BE REIMBURSED FOR PER DIEM OR SUBSISTENCE AT THEIR HEADQUARTERS REGARDLESS OF UNUSUAL CONDITIONS.

SANDRA BRADSHAW - LODGING AND MEAL EXPENSES AT HEADQUARTERS:

THIS DECISION IS IN RESPONSE TO A REQUEST FROM AN ACCOUNTING OFFICER WITH THE UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION (CPSC) FOR OUR DECISION CONCERNING THE ENTITLEMENT OF MS. SANDRA BRADSHAW TO REIMBURSEMENT FOR THE COST OF A MEAL AND LODGING OBTAINED IN THE VICINITY OF HER PERMANENT DUTY STATION. FOR THE REASON EXPLAINED BELOW, MS. BRADSHAW IS NOT ENTITLED TO REIMBURSEMENT FOR THESE EXPENSES.

MS. BRADSHAW OBTAINED LODGING AND INCURRED AN EXPENSE FOR DINNER ON JANUARY 29, 1987, IN BETHESDA, MARYLAND, THE LOCATION OF THE CPSC HEADQUARTERS. AT THAT TIME HER OFFICE WAS IN THE MIDST OF A TIME CRITICAL PROJECT WHICH WAS DUE ON FEBRUARY 2. MS. BRADSHAW WAS THE LEAD SECRETARY ON THIS PROJECT AND HAD WORKED LONG HOURS, ALONG WITH PROFESSIONAL AND OTHER CLERICAL STAFF, DURING THE WEEK OF JANUARY 26 30. SHE ALSO WORKED OVERTIME HOURS ON EACH DAY OF THE WEEKEND OF JANUARY 31 AND FEBRUARY 1.

ON JANUARY 29 AT 5 P.M. THE WEATHER FORECAST WAS FOR THE POSSIBILITY OF SNOW WITH SLEET AND FREEZING RAIN, TO BE FOLLOWED BY SUBFREEZING TEMPERATURES THE NEXT MORNING. THE GREATER WASHINGTON AREA WAS ALREADY EXPERIENCING TRANSPORTATION PROBLEMS DUE TO SNOWSTORMS WHICH HAD OCCURED ON JANUARY 22 AND 25, PROMPTING THE OFFICE OF PERSONNEL MANAGEMENT TO CLOSE FEDERAL AGENCIES ON JANUARY 22. MS. BRADSHAW'S SUPERVISOR FELT THAT GIVEN THESE CIRCUMSTANCES, IT WOULD HAVE BEEN DIFFICULT, IF NOT IMPOSSIBLE, FOR HER TO TRAVEL TO WORK THE NEXT MORNING FROM HER HOME IN LAUREL, MARYLAND, WHICH IS 30 MILES FROM THE CPSC HEADQUARTERS IN BETHESDA, MARYLAND. AS A RESULT, HE DIRECTED HER TO STAY AT A NEARBY HOTEL. MS. BRADSHAW IS REQUESTING REIMBURSEMENT OF $6 FOR HER DINNER MEAL AND $77 FOR HER LODGING.

IT IS WELL ESTABLISHED THAT THE GOVERNMENT MAY NOT PAY, IN ADDITION TO AN EMPLOYEE'S REGULAR COMPENSATION, SUBSISTENCE EXPENSES OR FURNISH FREE FOOD TO

CIVILIAN EMPLOYEES AT HEADQUARTERS WITHOUT SPECIFIC AUTHORITY, EVEN THOUGH THEY MAY BE WORKING UNDER UNUSUAL CONDITIONS. 42 COMP.GEN. 149 (1962). WE HAVE BASED THE PROHIBITION ON PAYMENT OF SUBSISTENCE EXPENSES OR PER DIEM UPON PARAGRAPH 1-7.6A OF THE FEDERAL TRAVEL REGULATIONS, FPMR 101-7 (SEPTEMBER 1981) (FTR), WHICH HAS BEEN REVISED AND IS NOW FOUND AT FTR PARAGRAPH 1-7.4A, FPMR A-40, SUPP. 20 (PUBLISHED AT 51 FED.REG. 19,660 (1986)). IT PROVIDES AS FOLLOWS:

"NO ALLOWANCE AT OFFICIAL STATION. A PER DIEM ALLOWANCE SHALL NOT BE ALLOWED WITHIN THE LIMITS OF THE OFFICIAL STATION (SEE DEFINITION IN 1- 1.3C(1) AT OR WITHIN THE VICINITY OF, THE PLACE OF ABODE (HOME) FROM WHICH THE EMPLOYEE COMMUTES DAILY TO THE OFFICIAL STATION EXCEPT AS PROVIDED IN PART 1-14. AGENCIES MAY DEFINE A RADIUS OR COMMUTING AREA THAT IS BROADER THAN THE LIMITS OF THE OFFICIAL STATION WITHIN WHICH PER DIEM WILL NOT BE ALLOWED FOR TRAVEL WITHIN ONE CALENDAR DAY."

REIMBURSEMENT OF ACTUAL AND NECESSARY SUBSISTENCE EXPENSES FOLLOWS THE SAME RULES AS ENTITLEMENT TO PER DIEM. SEE FTR PARAGRAPH 1-8.1D, FPMR A- 40, SUPP. 20.

WE HAVE BASED THE PROHIBITION OF 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.

IN APPLYING THE GENERAL RULE WE HAVE CONSIDERED SITUATIONS WHICH CLOSELY PARALLEL THAT OF MS. BRADSHAW. FOR INSTANCE, IN JOSLIN MCINTOSH, B-200779, AUGUST 12, 1981, WE DENIED THE CLAIM OF AN EMPLOYEE WHO, KNOWING THAT SHE WAS REQUIRED TO REPORT TO WORK THE NEXT DAY REGARDLESS OF WEATHER CONDITIONS, RENTED A HOTEL ROOM RATHER THAN RETURN IN HEAVY SNOW AND ON ICY ROADS TO HER RESIDENCE 20 MILES AWAY. AND IN PHILIP RABIN, 64 COMP.GEN. 70 (1984) WE DENIED THE CLAIM OF AN EMPLOYEE WHO, WHILE RETURNING FROM TEMPORARY DUTY ASSIGNMENT, OBTAINED A MEAL AND RENTED A MOTEL ROOM NEAR HIS RESIDENCE WHEN A SNOWSTORM AND ICY ROADS PREVENTED HIM FROM CONTINUING TO HIS HOME.

WHILE MS. BRADSHAW'S SUPERVISOR DID DIRECT HER TO RENT A HOTEL ROOM, THAT FACT DOES NOT AFFECT HER ENTITLEMENT TO REIMBURSEMENT. IT IS A WELL- SETTLED RULE THAT THE GOVERNMENT IS NOT ESTOPPED FROM REPUDIATING ERRONEOUS ADVICE AND AUTHORIZATIONS OF ITS OFFICIALS AND CANNOT BE BOUND BEYOND THE ACTUAL AUTHORITY CONFERRED UPON ITS AGENTS BY STATUTE OR BY REGULATIONS. SEE 56 COMP.GEN. 131 (1976) AND 54 COMP.GEN. 747 (1975). CITING THIS RULE IN DEPARTMENT OF COMMERCE, B-188985, AUGUST 23, 1977, WE DENIED THE CLAIM OF AN EMPLOYEE WHO HAD BEEN DIRECTED BY HIS SUPERVISOR TO RENT A HOTEL ROOM WHEN BLIZZARD CONDITIONS PREVENTED HIM FROM GOING HOME.

WE HAVE CREATED AN EXCEPTION TO THE GENERAL RULE BY AUTHORIZING 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. SEE 53 COMP.GEN. 71 (1973) AND RICHARD D. ROGGE, B-189003, JULY 5, 1977. AND A RECENTLY ENACTED STATUTORY PROVISION, 5 U.S.C. SEC. 5706A (ADDED BY PUB.L. 99-234, SEC. 103A, JAN. 2, 1986, 99 STAT. 1757), PROVIDES AUTHORITY FOR THE PAYMENT OF SUBSISTENCE EXPENSES AT HEADQUARTERS WHEN THE LIFE OF AN EMPLOYEE WHO SERVES IN A LAW ENFORCEMENT, INVESTIGATIVE, OR SIMILAR POSITION IS THREATENED.

MS. BRADSHAW'S CASE DOES NOT FALL WITHIN EITHER OF THE TWO EXCEPTIONS MENTIONED

ABOVE. AS A RESULT, WE MUST DENY HER CLAIM IN ACCORDANCE WITH THE RULE THAT AN EMPLOYEE MAY NOT BE REIMBURSED FOR PER DIEM OR SUBSISTENCE OR BE FURNISHED FREE FOOD AT HIS HEADQUARTERS.