Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Marvin B. Atkinson

File: B-256938

Date: September 21, 1995

DIGEST

Per diem claim for meals consumed by an aircraft pilot of the U.S. Customs Service while performing official investigative duties not on-board the aircraft during travel of more than 10 hours but less than 24 hours in neighboring cities may be paid.

DECISION

Employee of the U.S. Customs Service appeals our Settlement Certificate Z-2869219, dated August 10, 1994, denying him reimbursement of $246 for food. We remand the case to the U.S. Customs Service for action in accordance with the decision below.

BACKGROUND

Mr. Marvin B. Atkinson is an aircraft pilot of the U.S. Customs Service, Office of Enforcement, assigned to the Pensacola Air Unit in Milton, Florida. His primary duties include piloting various aircraft in carrying out law enforcement functions involved in the investigation and interdiction of smuggled merchandise and contraband and the detection and apprehension of both civil and criminal violators. During the period April 1993 to September 1993, Mr. Atkinson was involved in flights to various neighboring cities where he was engaged in meetings, surveillance and training. The travel involved more than 10 hours but less than 24 hours on each of 12 days. In connection with this travel, he submitted claims for meals and incidental expenses totaling $246. The U.S. Customs Service disallowed Mr. Atkinson's claims stating that both the aircraft and its base are his official duty station at which location the government may not provide meals to its officers, employees, or others. He appealed to our Office and we concurred with Customs.

Mr. Atkinson now appeals our denial of his claim, asserting that by defining the aircraft and its base as his official duty station, Customs is contravening Title 4 of the Code of Federal Regulation, part 301-7.1a which states that an employee is entitled to per diem while away from his official duty station on official business.

ANALYSIS AND CONCLUSION

The Federal Travel Regulation (FTR) prohibits the payment of per diem for travel of 10 hours or less. 41 C.F.R. Section 301-7.5(b) (1994). The expenses contained in Mr. Atkinson's claim meet this requirement. The FTR also states that an employee may not be paid per diem within the limits of his or her official station. 41 C.F.R. Section 301-7.5 (1994). The determination of what constitutes an employee's official duty station or headquarters involves a question of fact, and is not limited by an administrative determination. 31 Comp. Gen. 289 (1952). An employee's headquarters has been construed to be the place where the employee expects and is expected to spend the greater part of his time. Such a determination is made based upon the employee's orders, the nature and duration of his assignment, and the duty performed. 32 Comp. Gen. 87 (1952) and James H. Fox, B-182427, Oct. 9, 1975.

The question presented is whether Mr. Atkinson's duty station includes the places where he consumed the meals on which he has based his per diem claim.

We have applied the rule we set forth in Fox, supra, to an employee who was assigned as a crew member aboard National Oceanic and Atmospheric Administration aircraft to perform weather reconnaissance flights out of Miami, Florida. His claim for per diem for the food he brings and consumes during the flights was denied. Since the flights take off and land at Miami and the reconnaissance duties were performed on-board, both the aircraft and its airbase are the employee's permanent duty station. Howard C. Moore, B-229279, Aug. 25, 1988. We also applied this rule in Provision of Meals on Government Aircraft, 65 Comp. Gen. 16 (1985), to prohibit in-flight meals to those aboard a National Oceanic and Atmospheric Administration aircraft engaged in weather research, except for government personnel in a travel status. In both these cases, the duties were performed on-board the aircraft during the flights.

We have also held that where, incident to a longer journey, a pilot-employee made a touchdown stop at his permanent duty station, and consumed a meal there, per diem could not be allowed him, since the subsistence of civilian employees at their official station is personal to such employees, and may not be reimbursed. W. Paul Woodard, B-185932, May 27, 1976.

Applying the Moore decision cited above, Customs has considered the nature of the duties to be performed by Customs' aircraft pilots and determined that the employee's permanent duty station includes the plane and its base. This is consistent with the decisions cited above. However, Customs has extended this principle and applied it to meals purchased and consumed away from the aircraft in neighboring cities to which Mr. Atkinson flies on official duty. In our view, meals and incidentals purchased by Mr. Atkinson in cities other than the home base of the aircraft are meals and incidentals purchased outside the limits of his official duty

station. As such, the expenses incurred in purchasing them, given the facts presented, are reimbursable.

Thus, in considering Mr. Atkinson's claim, Customs must determine where each expense was incurred. Mr. Atkinson is not entitled to obtain reimbursement for meals or incidentals purchased within the limits of his official duty station and consumed on-board the aircraft, wherever it is located, at its base in Milton, or elsewhere. However, he may be reimbursed for meals and incidental expenses purchased incident to duties performed away from the aircraft outside the limits of his official duty station, including those purchased in neighboring cities to which he flies on official business. 41 C.F.R. § 301-7.1(c) (1994).

Accordingly, we return Mr. Atkinson's claim to Customs for disposition consistent with this decision.

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