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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

20427

**FILE:** B-202628

**DATE:** December 30, 1981

**MATTER OF:** Catherine Evans

**DIGEST:** Travel and transportation expenses for a new appointee to the Federal service are authorized by law and the Federal Travel Regulations to persons appointed to positions which have been designated as manpower-shortage positions. The fact that agency officials erroneously authorized reimbursement of expenses for an appointee to a position which was not designated a manpower-shortage position provides no basis for payment since a payment not authorized by statute or regulation will not form the basis for estoppel against the Government. Claim is not appropriate for reporting under the Meritorious Claims Act, 31 U.S.C. § 236, since it does not contain equities of unusual nature unlikely to reoccur.

Mr. Learned W. Barry, Controller of the United States Nuclear Regulatory Commission (NRC), has requested an advance decision on the proper disposition of an overpayment to Ms. Catherine Evans which occurred from the erroneous authorization of travel and transportation expenses at the time of her appointment by the NRC. Ms. Evans is not entitled to the expenses since there is no authority for the payment of these expenses to a new appointee unless specifically authorized by statute or regulation.

The circumstances under which the overpayment occurred are as follows. Ms. Evans, by a letter dated March 24, 1978, was offered an appointment with NRC as a Physical Security/Investigation Specialist (Intern) at NRC's Region IV Office in Arlington, Texas. At the time Ms. Evans resided in Vandergrift, Pennsylvania, and was not employed by the Government. The appointment letter further stated that certain travel and moving expenses could be reimbursed. In reliance upon NRC's offer, Ms. Evans terminated her employment and moved from Pennsylvania to Texas where she entered on duty with NRC on June 19, 1978. In connection with her move she was advanced \$245 for travel expenses, \$1,135 for movement of household goods, and \$280 for temporary storage, a total of \$1,660. When Ms. Evans submitted her

voucher in connection with the above-enumerated expenses, NRC discovered that the position to which she had been appointed was not listed in the Federal Personnel Manual as a manpower-shortage position and that consequently, NRC has erred in making the travel advances. Section 5723 of title 5, United States Code, and chapter 2 of the Federal Travel Regulations (FPMR 101-7, May 1973) authorize reimbursement of travel and transportation expenses of new appointees to those appointed to manpower-shortage positions, whereas new appointees generally are not entitled to these allowances.

Ms. Evans is objecting to the collection action to recover the advances. NRC in its submission notes that waiver under the provisions of 5 U.S.C. § 5584 is not available for travel and relocation expenses, citing Comptroller General decision James A. Schultz, 59 Comp. Gen. 28 (1979). However, NRC inquires as to whether the doctrine of equitable estoppel against the Government might be applicable to the circumstances of Ms. Evans case. That is does this doctrine estop the Government from collecting from Ms. Evans the money erroneously advanced? In the alternative NRC recommends relief for Ms. Evans under the provisions of the Meritorious Claims Act, 31 U.S.C. § 236 (1976).

The defense of estoppel is an equitable remedy available to one who has relied upon the actions of another to his detriment when the second party has knowledge or information not in possession of the first party. The doctrine of equitable estoppel was defined by the U.S. Court of Appeals, Ninth Circuit, in the case of Hampton v. Paramount Picture Corporation, 279 F.2d 100, 104 (1960), as follows:

"Four elements must be present to establish the defense of estoppel: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury."

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NRC in its submission points out that the agency was aware of the facts in Ms. Evans case although one of its employees made a mistake; NRC intended that Ms. Evans accept the offer of a job and the advance of money to pay for travel, transportation, and storage expenses; and Ms. Evans relied upon the agency's actions and statements.

The application of the doctrine of equitable estoppel with regard to overpayments to Government employees was discussed at length in William J. Elder and Stephen M. Owen, 56 Comp. Gen. 85 (1976). In holding that the doctrine of equitable estoppel does not apply we stated at page 88:

"\* \* \* the relationship between the Federal Government and its employees is not a simple contractual relationship. Since Federal employees are appointed and serve only in accordance with the applicable statutes and regulations, the ordinary principles of contract law do not apply."

Thus, it was concluded that equitable estoppel does not bar recovery by the Government from its employees in cases where statutes and regulations control the entitlements regardless of the erroneous actions of its agents. See in this regard Schweiker v. Hansen, 101 S.Ct. 1468 (1981), and cases cited therein. Accordingly, it is our view that the Government is not estopped from collecting the erroneous advances from Ms. Evans.

With regard to NRC's request that Ms. Evans' claim be referred to Congress under the provisions of the Meritorious Claims Act if relief under the doctrine of equitable estoppel is unavailable, that act provides that when a claim against the United States is filed in the General Accounting Office which may not be lawfully adjusted by use of an appropriation, but which claim in our judgment contains such elements of legal liability or equity as to be deserving of the consideration of Congress, this Office shall submit it to Congress with our recommendation.

The cases we have reported for the consideration of Congress generally have involved circumstances of an unusual nature which are unlikely to constitute a recurring problem. To report a particular claim to Congress when

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similar equities exist or are likely to exist, or are likely to arise with respect to others, would constitute preferential treatment.

Based on the record before us, we do not consider Ms. Evans' claim to have elements of equity of an unusual nature which are unlikely to reoccur. While we do appreciate the unfortunate circumstances which gave rise to this case, there have been a number of cases in which money erroneously paid to new employees for travel expenses was recovered. Although we did report the Schultz case cited by NRC to Congress, that case involved the transfer of an employee from the Postal Service to the Forest Service prior to our determination that Postal Service employees were not entitled to relocation expenses upon transfer to an executive agency.

Thus, we do not believe it would be appropriate for this Office to submit a recommendation to Congress for relief of Ms. Evans under the Meritorious Claims Act. Accordingly, the monies erroneously advanced to Ms. Evans should be recovered.

For the

*Harry D. Cline*  
Comptroller General  
of the United States