

DECISION

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

Gibson
P.M. I
30687

FILE: B-213620**DATE:** March 14, 1985**MATTER OF:** Civilian Employee of the Department of
the Navy - Suspected Fraudulent Claim for
Subsistence Expenses**DIGEST:**

Agency recouped subsistence expenses advanced to an employee, determining that he had fraudulently claimed payment of tips to hotel maids on each day of a 19-day temporary duty assignment. Based on evidence in the record, we conclude that the agency has sustained its burden of establishing that the employee fraudulently claimed payment of maid tips. Accordingly, the employee may not recover any of the subsistence expenses recouped from him.

An employee of the Norfolk Naval Shipyard, Portsmouth, Virginia, appeals our Claims Group settlement dated December 28, 1982. In that settlement, our Claims Group concurred with the Department of the Navy's determination that the employee fraudulently claimed payment of tips to hotel maids and thereby inflated his claim for subsistence expenses on each day of a 19-day temporary duty assignment. For the reasons stated below, we sustain our Claims Group settlement.

BACKGROUND

During the period December 1 to December 19, 1980, 21 employees of the Norfolk Naval Shipyard, including the subject employee, were assigned to perform temporary duty in Philadelphia, Pennsylvania.

The employees stayed at the Hilton Stadium Inn in Philadelphia, and claimed reimbursement for tips paid to hotel maids on each day of the temporary duty assignment. The subject employee claimed that he paid several dollars in maid tips on each of the 19 days.

Since each of the 21 employees claimed high amounts for maid tips, the Navy states that it suspected fraud and

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requested that the Naval Investigative Service (NIS) conduct an investigation of the claims. Based on the investigative reports, discussed in relevant part below, the Navy determined that all of the employees had fraudulently claimed the payment of tips to hotel maids and were liable to repay subsistence expenses for the tainted days. The subject employee was required to repay \$1,363.70, representing the total subsistence expenses he had claimed for the 19-day temporary duty assignment.

By settlement dated December 28, 1982, our Claims Group concurred with the Navy's determination that the employees had fraudulently claimed the payment of maid tips. Ten of the employees appealed the settlements. The employees submitted affidavits prepared by maids who allegedly serviced some of their rooms, stating that other maids and hotel employees had access to the rooms and may have taken tips left by the employees. The employees further contended that, among other procedural errors, the Navy failed to afford them an opportunity to examine and rebut the contents of the NIS reports.

By letter to the Navy, we remanded the employees' appeals and advised the agency to allow the employees an opportunity to examine the relevant investigative materials. At the same time, we informed the employees that they could resubmit their appeals to our Office after reviewing the investigative reports.

The Navy permitted the employees to examine the investigative materials, and then furnished us with an administrative report responding to the employees' arguments. In its report, the Navy challenges the reliability of the affidavits submitted by the employees, noting that the maids' statements were not taken until April 21, 1983, more than 2 years after the employees had completed their temporary duty assignment in Philadelphia. Further, the Navy asserts that the affidavits merely confirm that the maids had not received a majority of tips claimed by the employees. The agency states that NIS interviewed the hotel maids in January 1981, less than 6 weeks after the employees' temporary duty assignment, and that the evidence collected through these interviews should be accorded greater weight.

The subject employee resubmitted his appeal to our Office. This decision is limited to the subject claim.^{1/}

DISCUSSION

In order to establish fraud which will support either the denial of a claim or recoupment action in the case of a paid voucher, our Office has observed that:

"* * * the burden of establishing fraud rests upon the party alleging the same and must be proven by evidence sufficient to overcome the existing presumption in favor of honesty and fair dealing. Circumstantial evidence is competent for this purpose, provided it affords a clear inference of fraud and amounts to more than suspicion or conjecture. However, if, in any case, the circumstances are as consistent with honesty and good faith as with dishonesty, the inference of honesty is required to be drawn."
Charles W. Hahn, B-187975, July 28, 1977.

The NIS report concerning the subject employee contains summaries of interviews with a day-shift maid and a night chambermaid who reportedly serviced the employee's room on the hotel's third floor and stated that they received no tips from that room. The report also includes the day-shift maid's sworn statement confirming that she worked on the hotel's third floor during the period in question, and stating that she did not receive any portion of the tips claimed by the employee. We believe that this evidence, particularly the day-shift maid's sworn statement, establishes a strong inference that the subject employee fraudulently claimed the payment of maid tips.

Although the subject employee submitted affidavits prepared by the day-shift maid and night chambermaid

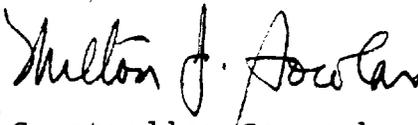
^{1/} We decided one other appellant's claim in Civilian Employee of the Department of the Navy, B-213629, January 17, 1985.

B-213620

interviewed by the Navy, these affidavits do not rebut the inference of fraud established by the Navy's evidence. Both of the maids' sworn statements merely speculate that other maids or hotel staff may have taken tips left by the employees, and actually tend to confirm that the maids did not receive the claimed tips. Furthermore, as the Navy points out, the reliability of the affidavits is subject to question since they were taken more than 2 years after the employees completed their temporary duty assignment.

Accordingly, we conclude that the Navy has sustained its burden of establishing that the subject employee fraudulently claimed the payment of maid tips on each day of his 19-day temporary duty assignment. Because a fraudulent claim for any subsistence item taints the entire subsistence allowance for that day, we hold that the subject employee is not entitled to recover any of the subsistence expenses recouped from him. See generally B-212354, August 31, 1983; and 57 Comp. Gen. 664 (1978).

For the reasons stated above, we sustain our Claims Group settlement.

for 
Comptroller General
of the United States