

DECISION

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

FILE: B-221496

DATE: June 26, 1986

MATTER OF: John H. Teele - Manpower Shortage Travel
and Transportation - Meritorious Claims Act

DIGEST:

1. A new appointee to a manpower shortage position was issued travel orders erroneously authorizing reimbursement for temporary quarters subsistence expenses, real estate expenses and miscellaneous expenses as though he were a transferred employee. After travel was completed, his orders were corrected to show entitlement only to travel, travel per diem and movement of household goods, as authorized for manpower shortage position. The claimant asserts entitlement to full reimbursement, arguing that the advice received when hired and the travel orders issued are consistent with private sector practices. The claim is denied. Under 5 U.S.C. § 5723 (1982), the travel and transportation rights of a manpower shortage appointee are strictly prescribed. Regardless of whether the error was committed orally or in writing, the government is not bound by any agent's or employee's acts which are contrary to governing statute or regulations.
2. GAO will no longer follow its general policy of not referring erroneous advice cases to Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d). Instead, each such case will be considered for submission based on its individual merits. Accordingly, GAO submits to Congress claim of new appointee to a manpower-shortage position who was erroneously issued travel orders authorizing reimbursement for temporary quarters subsistence expenses, real estate

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expenses, and miscellaneous expenses where the appointee reasonably relied on this erroneous authorization and incurred substantial costs.

This decision is in response to a letter from Mr. John H. Teele. He requests that his relocation expense claim, which was disallowed administratively, be allowed by this Office or submitted to Congress as a meritorious claim under the provisions of 31 U.S.C. § 3702(d). We conclude that while his relocation expense claim may not be allowed, it is appropriate to submit it to Congress as a meritorious claim.

BACKGROUND

Mr. Teele, who was employed in the private sector and resided in Chelmsford, Massachusetts, applied for Federal employment with the United States Missile Command, Department of the Army. By letter dated April 26, 1985, he was informed that he was selected for the position of Electronics Engineer, grade GS-14; that his first duty station would be Redstone Arsenal, Alabama; and that his tentative reporting for duty date (May 20, 1985) was dependent on preparation of travel orders which were to follow. We understand that the position to which he was appointed was designated a manpower shortage category position.

The travel orders issued on April 29, 1985, authorized him and his immediate family (spouse and four dependent children) to travel from Chelmsford, Massachusetts, to Huntsville, Alabama, by privately owned vehicle. In addition to mileage reimbursement, travel per diem, and shipment of household goods with up to 90 days temporary storage, Mr. Teele incorrectly was authorized temporary quarters subsistence expenses, not to exceed 60 days, real estate expenses, and miscellaneous expenses. He was also given a travel advance of \$3,600.

Following his reporting for duty at Redstone Arsenal, Alabama, and submission of his travel voucher claim, it was administratively determined that his travel orders had been improperly issued since he was not an employee being transferred from one official duty station to another

for permanent duty. By amendment dated October 8, 1985, his orders were corrected to show that the purpose for his travel was to effect a first duty station move in a manpower shortage position and that reimbursement for temporary quarters subsistence expenses, real estate expenses, and miscellaneous expenses was not authorized.

The total amount of his claim is approximately \$14,500.^{1/} Because Mr. Teele was a manpower shortage position employee, it was administratively determined that his maximum entitlement, in addition to the transportation of his household goods, was \$357.33. In this connection, because his travel orders had been erroneously issued, the agency determined that, since he was only entitled to \$357.33, he had to repay \$3,242.67, representing the balance of his \$3,600 travel advance.

As the basis for his request that his claim be submitted as a meritorious claim, Mr. Teele asserts that in the private sector when a business firm hires an individual for a position which requires the individual to move to another location, it is normal for that firm to reimburse all of the individual's relocation expenses. He contends that having received similar advice from the Missile Command's Civilian Personnel Office, he had no reason to question the validity of that advice, especially when that advice was confirmed in the travel orders.

DECISION

The employment relationship between the Federal government and its employees is statutory, not a simple contractual relationship, nor one which is established by informal custom and practices. Since Federal employees are appointed and may serve only in accordance with applicable statutes and regulations, the ordinary principles of contract law do not apply. See Elder and Owen, 56 Comp.

^{1/} A line item audit of his overall claim was never performed administratively since it was determined that he was not entitled to reimbursement for any expenses other than his actual mileage and travel per diem.

Gen. 85, at 88 (1976); Kania v. United States, 227 Ct. Cl. 240, at 251, 640 F.2d 264, at 268, cert. denied, 454 U.S. 895 (1981); and Shaw v. United States, 226 Ct. Cl. 240, at 251, 640 F.2d 1254, at 1260 (1981).

It is a rule of long standing that all public officers and employees of the Federal government must bear the expense of travel and transportation to their first permanent duty stations in the absence of a provision of law or regulation providing otherwise. One such provision of law is contained in 5 U.S.C. § 5723 (1982). That provision authorizes the travel and transportation expenses of a manpower shortage position appointee and immediate family and includes the movement of their household goods and other personal effects from their place of residence at the time of selection to the first duty station. However, it does not include temporary quarters subsistence expenses, real estate expenses, or miscellaneous expenses. Those expenses are authorized only for Federal employees who are being transferred from one official station or agency to another for permanent duty (5 U.S.C. § 5724(a)(1)).

With regard to the erroneous advice given and the improperly issued travel orders, it is a well settled rule of law that the government cannot be bound beyond the actual authority conferred upon its agents and employees by statute or by regulations. This is so even though the agent or employee may not have been completely aware of the limitation on his authority. See M. Reza Fassihi, 54 Comp. Gen. 747 (1975), and court cases cited therein. Also, the government is not estopped from repudiating unauthorized acts performed by one of its agents or employees and any payments made on the basis of such erroneous authorizations are recoverable. See Joseph Pradarits, 56 Comp. Gen. 131 (1976), and T. N. Beard, B-187173, October 4, 1976.

In the present case, Mr. Teele was a new appointee in a manpower shortage position. His maximum statutory entitlement was reimbursement for his and his immediate family's travel, travel per diem, and movement of their household goods and personal effects. Since Mr. Teele's household goods and effects were shipped by Government Bill of Lading and he was reimbursed for his travel and his family's travel to Huntsville, he has received all

the reimbursement to which he is entitled under 5 U.S.C. § 5723, and the agency's action to require him to repay the excessive travel advance received by him (\$3,242.67), is legally correct.

Having determined that the disallowance of Mr. Teele's claim was legally correct, we turn to his request that the matter be submitted to Congress as a meritorious claim under 31 U.S.C. § 3702(d). For the reasons stated below, we agree with Mr. Teele that a submission is appropriate in this case.

Subsection 3702(d) of title 31, the so-called Meritorious Claims Act, provides:

"The Comptroller General shall report to Congress on a claim against the Government that is timely presented under this section that may not be adjusted by using an existing appropriation, and that the Comptroller General believes Congress should consider for legal or equitable reasons. The report shall include recommendations of the Comptroller General."

It has been our general policy not to report to Congress under the Meritorious Claims Act claims which are based on erroneous official advice furnished to Government employees, even where the employee acted reasonably in reliance on the erroneous advice and incurred substantial costs. ^{2/} We reasoned that since such cases are not unusual they fail to present the extraordinary circumstances for which submissions under the Meritorious Claims Act should be reserved. Also, we expressed the view that to submit individual erroneous advice cases to Congress would afford preferential treatment to the few claimants whose cases come before us over many others similarly situated whose cases we never see.

^{2/} See, e.g., B-209292, February 1, 1983; B-202628, December 30, 1981; B-195242, August 29, 1979; B-191039, June 16, 1978.

We now conclude that a change in this policy is warranted. While erroneous advice cases are not unusual, each such case deserves to be considered on its own merits. The fact that we are unable to seek relief in all cases should not prevent the submission of those worthy cases that do come before us. Therefore, we now will submit to Congress erroneous advice cases which, in our judgment, meet the standards for relief under the Meritorious Claims Act.

We are satisfied that Mr. Teele's claim meets the Act's standards based on substantial equitable considerations. As noted previously, the erroneous authorization was set forth in his travel orders and thus had every appearance of official sanction. It seems clear that he incurred substantial costs in reliance on this authorization and that his reliance was reasonable. Accordingly, we are forwarding a report to Congress requesting that Mr. Teele be reimbursed normal relocation expenses as though he had been an employee transferred in the interest of the government. Collection action on the excessive travel advance should be suspended pending congressional consideration of our request.

Milton F. Jost
for
Comptroller General
of the United States