



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Michael Moran - Travel Allowances

File: B-225840

Date: September 18, 1987

DIGEST

1. A Veterans Administration employee who, due to an agency administrative error, received improper authorization for a house-hunting trip for his wife and himself from San Juan, Puerto Rico, to Houston, Texas, is granted a waiver of the claim against him for the cost of the round-trip airfare paid by the government. Payment for house-hunting trips to, from, or outside of the continental United States is not authorized under 5 U.S.C. § 5724a(a)(2). However, a waiver of the claim is granted under the Comptroller General's newly extended waiver authority at 5 U.S.C. § 5584 since there is no evidence of fraud, misrepresentation, fault or lack of good faith on the part of the employee and collection in this case would be against equity and good conscience and not in the best interests of the United States.

2. The Comptroller General's authority to waive a claim against an employee applies to cases where an agency actually made an erroneous payment of pay or allowances or travel and transportation expenses. In a case where the agency erroneously authorized a house-hunting trip from a point outside the continental United States for the employee and the employee incurred the expense but the agency made no payment, the waiver statute does not apply since there is no claim of the United States to waive. In addition, there is no authority to authorize payment for expenses arising out of such house-hunting trips which are not otherwise authorized by law.

DECISION

This decision is in response to a request for an advance decision from the Director, Office of Budget and Finance, Veterans Administration (VA), concerning the entitlement of a VA employee to a per diem allowance and transportation costs for a house-hunting trip taken by the employee and his wife from San Juan, Puerto Rico, to Houston, Texas.

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Under the express provisions of paragraph 2-4.1c(3) of the Federal Travel Regulations (FTR), which implement 5 U.S.C. § 5724a(a)(2), employees may not be reimbursed for travel and transportation expenses for trips to seek permanent residence quarters at a new duty station if either the old or new duty station, or both duty stations, are located outside the continental United States. Since Puerto Rico is outside the continental United States, we may not authorize payment of per diem or transportation costs in this case.

Under the Comptroller General's waiver authority set forth at 5 U.S.C. § 5584, we are waiving the claim against the employee for the round-trip airfare paid by the agency since collection would be against equity and good conscience and not in the best interests of the United States. However, waiver is not available for the employee's per diem since it does not involve an erroneous payment or a claim by the United States.

BACKGROUND

Mr. Michael Moran, Jr., a VA employee stationed in Puerto Rico, was selected to fill the position of Chief, Property Management Section, VA Regional Office, Houston, Texas. The VA issued Mr. Moran travel orders on June 10, 1986, that included authorization for an advance round trip to Houston for his wife and himself to seek a permanent residence at his new duty station. Mr. Moran and his wife traveled via commercial airline to Houston on July 9 and returned to San Juan on July 19. Air travel was procured by a Government Transportation Request (GTR) issued by the agency and the agency subsequently paid the airline.

Upon returning to Puerto Rico, Mr. Moran learned of some problems concerning his travel. VA officials at San Juan informed him that his request for administrative leave for the period he was house hunting was not approved and that he had been charged 56 hours of annual leave for the workdays he was absent during that time. On July 25, Mr. Moran inquired about being charged annual leave and was told by a personnel officer that the Houston Regional Office had made an administrative error that would be corrected once Mr. Moran relocated to the Houston area. On August 1, Mr. Moran received final travel authority from the San Juan personnel office. His final travel orders did not indicate that his house-hunting trip was unauthorized or otherwise improper.

After relocating to Houston, Mr. Moran was informed by the VA Finance Office there that he owed the government \$1,079.40 for the round-trip airfare from San Juan to

Houston for his and his wife's house-hunting trip. In addition, the agency refused to pay Mr. Moran per diem on the travel voucher he submitted for the living expenses the couple incurred while house hunting. The agency did, however, approve administrative leave for Mr. Moran for the period he was away from work. Mr. Moran now requests a waiver of the agency's claim against him and seeks payment on the travel voucher.

ANALYSIS

Reimbursement for travel and transportation expenses to seek a permanent residence at a new duty station is authorized under 5 U.S.C. § 5724a, which provides in part as follows:

"(a) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of * * *

"(2) Expenses of per diem allowance or subsistence expenses of the employee and his spouse, not in excess of the maximum payment permitted under regulations which implement section 5702 of this title. Expenses of transportation to seek new permanent residence quarters at a new official station when both the old and new stations are located within the continental United States.^{1/} * * *"

This statutory provision is implemented by paragraph 2-4.1c(3) of the FTR, which provides that an employee may not be reimbursed for a house-hunting trip when either the old or the new official duty station or both are located outside the conterminous United States.

In prior Comptroller General decisions addressing the issue of improperly authorized travel for house-hunting trips, we denied payment even when it was clear from the record that the employees traveled in reliance upon what they believed were proper travel authorizations. See, e.g., Eugene B. Roche, B-205041, May 28, 1982. We stated in those decisions that erroneous advice or authorization does not create a right to reimbursement where the expense claimed is precluded by law.

^{1/} "Continental United States" is defined in 5 U.S.C. § 5721(3) to mean the several States and the District of Columbia, but does not include Alaska or Hawaii.

Since we last decided a case involving this issue, Congress enacted Public Law No. 99-224, December 28, 1985, which extends the Comptroller General's waiver authority to include waiver of claims involving erroneous payments of travel, transportation and relocation expenses and allowances. Section 5584(a) of title 5, United States Code, now provides that:

"(a) A claim of the United States against a person arising out of an erroneous payment of pay or allowances made on or after July 1, 1960, or arising out of an erroneous payment of travel, transportation or relocation expenses and allowances, to an employee of an agency, the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part by--

"(b) The Comptroller General * * *."

The Comptroller General may not exercise his waiver authority if, in his opinion, there exists in connection with the claim, an indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or any other person with an interest in obtaining a waiver. Conditions for waiver involving travel and transportation are identical to those for waiver involving pay and allowances set forth in 4 C.F.R. § 91.5 (1986), including that there be a claim of the United States arising out of an "erroneous payment" made to an employee.

In circumstances such as those in this case, where an employee is unaware of the prohibition against payment of travel costs for a house-hunting trip to, from, or outside of the continental United States, and his agency authorizes and pays for such travel, we believe the employee is entitled to a waiver as long as the waiver request otherwise meets the conditions required by regulation.

In this case, the only payment the agency made in connection with the travel expense of the house-hunting trip to Texas was the airfare. While Mr. Moran is claiming per diem in the amount authorized by the agency, he did not receive any payment from the agency for these travel expenses. Therefore, as to these expenses, the agency has no claim against him for erroneous travel payments and there is no amount for our Office to waive. In addition, since payment in this case is prohibited under pertinent statute, we are unable to authorize payment on Mr. Moran's travel voucher. We must, therefore, deny payment to Mr. Moran for the travel expenses he and his wife incurred on their house-hunting trip.

The agency's payment on the GTR for Mr. Moran's round-trip airfare from Puerto Rico to Texas does constitute an erroneous payment made in his behalf within the meaning of 5 U.S.C. § 5584 and the implementing regulations, and thus the claim against him arising out of that payment may be considered for waiver. In this regard, there is no evidence that Mr. Moran knew of the limitation imposed on travel outside the continental United States for house-hunting trips. The record indicates that he was not informed of the type of travel expenses to which he was entitled. Upon receipt of his travel orders, he was given a VA travel handbook explaining which travel expenses, in connection with his transfer, would be reimbursed. Mr. Moran states that the book's introduction instructed employees to refer to their VA Form 60-3036c (travel authority) to determine which types of allowances were authorized for reimbursement in their specific circumstances. With this limited information, Mr. Moran, in reliance upon duly authorized travel orders, took the house-hunting trip from San Juan to Houston.

The Director of the VA Regional Office in Houston recommends waiver in Mr. Moran's case, acknowledging that an administrative error on the part of the agency was the cause of the improper payment. The Director explains that his office never had transferred anyone from Puerto Rico to Houston and officials there were not aware of the prohibition against government-paid house-hunting trips from Puerto Rico to the mainland.

Based on the facts of record, there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of Mr. Moran or anyone else having an interest in obtaining a waiver in this case. Mr. Moran was not attempting to obtain government funds to which he believed he was not entitled; rather, he took the trip at government expense as authorized by his agency.

In accordance with the above, Mr. Moran's request for waiver of the claim against him for the erroneous payment for air transportation in the amount of \$1,079.40 is granted.

for *Harry R. Van Cleave*
Comptroller General
of the United States