



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: James E. Moynihan - Travel and Subsistence
Expenses - Return to Permanent Station

File: B-229074

Date: March 28, 1988

DIGEST

1. An employee, in advance of an overseas transfer, performed vacation travel away from his permanent duty station. He returned to his permanent duty station for a short period to accompany his spouse while she completed the steps necessary to become a naturalized citizen prior to their overseas travel. The employee's claim for his wife's travel, subsistence, and other expenses on her behalf under 5 U.S.C. § 5702 (1982) is denied. Only employees traveling away from their permanent stations on official business are entitled to travel and subsistence reimbursement. Since the employee's spouse was not an employee as defined in 5 U.S.C. § 5701(2), her travel expenses may not be allowed.

2. An employee, in advance of an overseas transfer, performed vacation travel away from his permanent duty station. He returned to his permanent station for a short period to accompany his spouse while she was examined to become a naturalized citizen prior to their overseas travel. His claim for travel expenses for himself to return to his permanent station is denied. Under 5 U.S.C. § 5702 and paragraphs 1-1.4 and 1-11.3b of the Federal Travel Regulations, in order for travel to be deemed to be on official business, it must be authorized or approved in writing. Since he had not been on authorized official business away from his permanent station, his return travel to his permanent station may not be paid.

3. An employee, in advance of an overseas transfer, performed vacation travel away from his permanent duty station. He returned to his permanent station for a short period to accompany his spouse while she was examined to become a naturalized citizen prior to their overseas travel.

041693

His claim for subsistence expenses is denied. Under the provisions of paragraph 1-7.6a of the Federal Travel Regulations, the government may not pay subsistence expenses to employees at their official duty stations.

DECISION

This decision is in response to a request by an Authorized Certifying Officer, Federal Bureau of Investigation, Department of Justice. It concerns the entitlement of one of its employees to be reimbursed expenses incident to travel performed prior to his transfer to an overseas duty post. We conclude the employee is not entitled to reimbursement for the following reasons.

BACKGROUND

Mr. James E. Moynihan, an employee of the Federal Bureau of Investigation (FBI) stationed in Washington, D.C., applied in May 1986 for the position of Assistant Legat in Tokyo, Japan. In August 1986, he was notified of his appointment and transfer, to be effective in June 1987.

In February 1987, Mr. Moynihan applied for a special type of security clearance required of all Legat personnel. In May 1987, his application was denied because his wife was a Japanese citizen and the security clearance sought required that the employee and all members of his family be United States citizens. On June 5, 1987, Mr. Moynihan was informed that the earliest possible date his wife could be scheduled for a citizenship examination was July 7, 1987, and that an expedited examination could only be performed in Washington, D.C.

Prior to being notified that his application for a special security clearance was denied incident to his transfer, Mr. Moynihan had leased his residence in Washington, to be effective June 12, 1987. Also, he had made arrangements to vacation in California, had paid rental deposits there, and had purchased airline tickets for his family. As a result, Mr. Moynihan was faced with two alternatives; either he could obtain temporary quarters in Washington for his family from June 12, 1987, to July 17, 1987, and forfeit his vacation deposits, or he could pursue his vacation plans and obtain living accommodations for his children in California while he and his wife returned to Washington in July for two weeks. This latter period was the time required for his wife to be examined, sworn in as a citizen, secure a

passport, and obtain a Japanese travel visa. Mr. Moynihan chose the latter course, and, upon completion of the latter steps, Mr. Moynihan and his family transferred to Tokyo on July 19, 1987.

Mr. Moynihan submitted a travel voucher in the amount of \$1,210 to cover his and his wife's travel expenses from California and return, their subsistence while in Washington and her citizenship preparation material and filing fee. He contends that reimbursement is proper because, in order for him to receive the necessary security clearance for his foreign assignment, his wife had to become a U.S. citizen. Further, he argues that it benefited the U.S. government since the whole citizenship process was deemed necessary by the FBI in connection with his employment. In support of his claim, he cites to 62 Comp. Gen. 294 (1983), 5 U.S.C. § 5702, and Erickson v. United States, 105 F. Supp. 1020 (1952).

The FBI expresses the view that there is no authority under law, regulations, or rulings of this Office which would permit reimbursement. We concur with that assessment on several grounds.

RULING

The authority to pay travel, transportation, and subsistence to federal employees while traveling on official business is contained in chapter 57 of title 5, United States Code (1982). Section 5702 of title 5, United States Code, provides in part:

"(a)(1) Under regulations prescribed pursuant to section 5707 of this title, an employee, when traveling on official business away from the employee's designated post of duty, or away from the employee's home or regular place of business . . . is entitled to any one of the following:

"(A) a per diem allowance . . .

"(B) . . . actual and necessary expenses of official travel . . . or

"(C) a combination of payments"

The term "employee" is defined in 5 U.S.C. § 5701(2) as meaning "an individual employed in or under an agency"

Since Mrs. Moynihan was not an employee of the federal government, none of the expenses claimed on her behalf under section 5702 may be allowed. Her travel expenses would be limited to her travel from Washington, D.C., to Tokyo, Japan, incident to Mr. Moynihan's transfer.

As to Mr. Moynihan's travel claim under section 5702, we note that the regulations issued pursuant to 5 U.S.C. § 5707, which govern travel on official business away from the employee's post of duty, are contained in Chapter 1 of the Federal Travel Regulations, FPMR 101-7, incorp. by ref., 41 C.F.R. § 101-7.003 (1986) (FTR). Paragraph 1-1.4 of the FTR provides in part:

"1-1.4 Authority for travel. Except as otherwise provided by law, all travel shall be either authorized or approved by the head of the agency or by an official to whom such authority has been delegated. . . ."

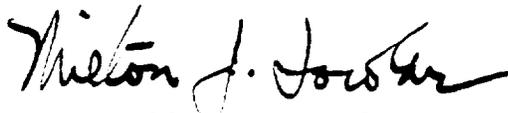
This FTR provision, in conjunction with the before-cited code provision, has been construed by this Office as requiring a written authorization or approval. Robert Gray, B-203820, Oct. 19, 1981. This construction is supported by FTR, para. 1-11.3b which states that the travel voucher must be supported by a copy of the travel authorization. In the absence of a travel authorization or a determination by the FBI that this travel constituted official business, we must deny reimbursement for his travel expenses. See Donald F. X. McIntyre, B-192636, Dec. 15, 1978.

With regard to the case of Erickson v. United States, cited above, and our decision at 62 Comp. Gen. 294, cited above, neither supports Mr. Moynihan's claim. The issue in Erickson concerned an employee who was performing official temporary duty travel and who was placed in a leave status due to an incapacitating illness while performing such travel which, under the law then in effect, removed him from a travel status. The employee sought to retroactively obtain the benefits of a later-enacted amendment to the law authorizing a continuation of travel per diem in such cases. The court ruled in Erickson that the amendment was prospective only. Upon review, we find nothing in the Erickson opinion which would support Mr. Moynihan's claim.

In our decision in 62 Comp. Gen. 294, the issue was whether an employee could be placed in a temporary duty travel status to permit him to be examined by a private physician for a required fitness-for-duty examination some distance from his official duty station, in lieu of having the examination performed by a United States medical officer at

his official station. Citing to the regulations governing these matters, we concluded that where an employee was required to be examined as a condition of continued employment, it would be proper to place him in a travel status for that purpose and reimburse him for expenses of that travel, so long as the private physician was acceptable to the agency and the distance traveled was reasonable. 62 Comp. Gen. 294, 296-97, supra.

In the present situation, no travel authorization was issued. It was not issued because Mr. Moynihan's travel to California from his permanent duty station in Washington, D.C., was not official business. It was a planned vacation during a period of annual leave and taken in advance of his overseas transfer. In view of this, there is no basis upon which his travel expenses for his return travel to his permanent duty station may be allowed. That would also include his per diem claim for the period he was at his permanent duty station, Washington, D.C., following his return travel from California, and before he initiated his relocation travel to Tokyo, Japan, on July 19, 1987. See FTR, para. 1-7.6a. See also 53 Comp. Gen. 457 (1974).

for 
Comptroller General
of the United States