

DECISION



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

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FILE: 12-111046

DATE: NOV 12 1974

MATTER: 881046

Albert L. Hedrich - Constructive travel costs

DIGEST:

Employee of Department of Commerce who used his privately owned automobile while on official business away from his headquarters, and who was authorized to use either privately owned automobile or rental car, should be allowed reimbursement on mileage basis and not on basis of constructive cost of rental car since statute and regulations provide that reimbursement for travel expenses when privately owned automobile is used is limited to a fixed mileage rate. Moreover, mileage reimbursement may not exceed constructive cost of travel by common carrier since the use of the privately owned automobile was for personal convenience.

This action is at the request of an authorized certifying officer for an advance decision as to whether a reclaim voucher in the amount of \$79.86 representing the constructive cost of a rental car by Mr. Albert L. Hedrich, an employee of the Department of Commerce, may be certified for payment.

The record shows that by Travel Order No. 303260 dated June 13, 1973, Mr. Hedrich was authorized to travel from Washington, D. C., to Boulder, Colorado, and return, in order that he could attend technical program discussions in Boulder. Mr. Hedrich was also authorized to take annual leave from June 15, 1973, to June 24, 1973. The travel order allowed Mr. Hedrich to use either his own automobile or a rented car in connection with the necessary business travel. Accordingly, Mr. Hedrich left his residence in McLean, Virginia, on June 15, 1973, using his privately owned car, and remained in annual leave status from that date until he arrived in Boulder, Colorado, on June 24, 1973, whereupon he performed the official business required of him. Mr. Hedrich returned to McLean on July 1, 1973.

While he was in Boulder, Mr. Hedrich drove his own car 93 miles on official business. Mr. Hedrich now claims reimbursement for the constructive cost of a rental car for this travel performed in Boulder. The constructive cost for the above travel as estimated by a sample receipt from

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Continental Rental Car Agency would have been \$13 per day plus 13 cents per mile.

The certifying officer, citing our decision at B-168637 July 15, 1970, originally disallowed Mr. Hedrich's claim for the constructive cost of a rental car and instead allowed Mr. Hedrich 11 cents per mile for the travel performed in Boulder. The constructive cost of air fare from Washington to Boulder and return was also allowed. She now requests our decision as to the legality of paying the constructive car rental costs.

The argument is made on Mr. Hedrich's behalf by Mr. Russell J. Jones, Acting Administrative Officer, in a memorandum dated December 27, 1973, to Mr. James P. Messer, Chief, Accounting Division, National Bureau of Standards, dated B-168637, *supra*, does not apply in Mr. Hedrich's case as that decision refers to an employee on temporary duty with a comparison in use of privately-owned automobile versus rental of a commercial vehicle." Mr. Jones agrees further:

"A search of applicable GSA travel regulations shows no restrictions as to method of reimbursement, i.e. in figuring constructive costs, to take parts of actual costs and apply them to constructive costs. Reference is made to the Handbook of Travel Policies and Procedures, U. S. Department of Commerce, Exhibit 5.03-2. Traveler cannot be penalized by taking one portion of constructive cost and not allowing either all of actual or all of constructive."

Mr. Jones indicates that since rental of a motor vehicle was authorized, it follows that the full constructive rental cost is payable.

The provision in the law relating to reimbursing Government employees for travel by privately owned automobile is found at 5 United States Code, 552, and it states in part as follows:

"(a) Under regulations prescribed under section 5707 of this title, an employee or other individual performing service for the Government, who is engaged on official business inside or outside his designated post of duty or place of service, is entitled to not in excess of--

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4-11-66

"(2) 12 cents a mile for the use of a privately owned automobile or airplane;

instead of the actual expenses of transportation when that mode of transportation is authorized or approved as more advantageous to the Government. * * *

The applicable regulations implementing the above law are found in the Federal Property Management Regulations (FPMR) 101-7, May 1, 1973. Section 1-4.1.a of FPMR 101-7 states in part as follows:

" * * * when employees and others rendering service to the Government use privately owned motor vehicles or airplanes in the conduct of official business within or outside their designated posts of duty or places of service and such use is authorized or approved as advantageous to the Government or as an authorized or approved exercise of the employee's preference, payment shall be made on a mileage basis unless payment on an actual expense basis is specifically authorized by law."

It is clear from the above that when an employee such as Mr. Hedrich is assigned temporarily away from his headquarters and uses his private automobile on official business, the Government shall only reimburse the employee on a mileage basis of up to 12 cents a mile. In this case 11 cents a mile has been determined by the authorities as appropriate reimbursement. There is no allowance in these circumstances for actual expenses other than for parking fees, ferry fares and bridge, road, and tunnel tolls. 5 United States Code 5704(b). No authority exists for reimbursement for the use of a privately owned vehicle above the maximum imposed by statute as set out in section 5704(a). Although Mr. Hedrich was authorized to use a rented car and he would have been reimbursed for the use of a rented car had he in fact used one, since he used his privately owned vehicle, he may only be reimbursed for such use within the statutory maximum as set out at 5 U.S.C. 5704(a), *supra*. Our above-cited decision, E-167637, and our decision E-160452, January 26, 1967, clearly state this principle.

Although the record is not clear, it appears it is claimed that Mr. Hedrich is being penalized because reimbursement of his travel costs in Boulder is limited to actual mileage whereas his Washington to Boulder portion of the trip is computed at the constructive air fare which is less than the actual mileage. On Mr. Hedrich's travel order it is noted that

1-11-73

use of a private automobile is both advantageous to the Government and for the convenience of the traveler. However, since annual leave was also approved on the travel order from June 15, 1973, through June 24, 1973, we conclude that the use of the privately owned automobile was for Mr. Heinrich's personal convenience. Section 1-4.3 of FPMR 101-7 provides in part as follows:

* * * When use of privately owned conveyance is in lieu of common carrier transportation. Whenever a privately owned conveyance is used for official purposes as a matter of personal preference in lieu of common carrier transportation under 1-2.2d, payment for such travel shall be made on the basis of the actual travel performed, computed under 1-4.1 at the mileage rate prescribed in 1-4.2a plus the per diem allowable for the actual travel. The total allowable shall be limited to the total constructive cost of appropriate common carrier transportation including constructive per diem by that method of transportation. * * *

Therefore, under the above-quoted regulation it was required that Mr. Heinrich's reimbursement for the Washington to Boulder and return travel by privately owned automobile be limited to the constructive cost of common carrier transportation.

Accordingly, the reclaim voucher may not be certified for payment.

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Comptroller General
of the United States