

Maguire

DECISION



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

124198

FILE: B-210986

DATE: May 21, 1984

MATTER OF: Irving M. Miller

DIGEST: Government attorney used personal funds to pay air fare for three witnesses who had been subpoenaed to appear at court hearing when airline inexplicably refused to honor GTR. Since presence of witnesses was necessary and time did not reasonably permit other arrangements, attorney may be reimbursed under guidelines set forth in 62 Comp. Gen. 419 (1983). However, record is unclear regarding circumstances of attorney's payment of lodging and subsistence expenses for witnesses and no finding can be made that attorney acted in a situation of urgent public necessity. Accordingly, based on present record, attorney may not be reimbursed for those expenses.

This is in response to a request for an advance decision from Mr. Ronald P. Passero, Authorized Certifying Officer, Equal Employment Opportunity Commission (EEOC), as to the propriety of paying a claim by Mr. Irving M. Miller, an EEOC employee, for reimbursement of expenses incurred by him in personally financing the travel of certain Government witnesses. Although the request for decision was not accompanied by a specific payment voucher (31 U.S.C. § 3529(a)(2)), we will treat the matter as the referral of a doubtful claim for decision under our claims settlement authority, 31 U.S.C. § 3702(a). As discussed below, we conclude that part of the claim may be allowed and part must be denied.

Facts

In February 1979, Mr. Miller was serving as a trial attorney for the EEOC in the case of EEOC v. Ironworkers Local No. 378 in the U.S. District Court for the Northern District of California in San Francisco. A hearing in that case was scheduled for February 12, 13, and 14, 1979, which required the attendance of five witnesses for the EEOC, Charles Barker, Ralph Evans, Samuel Pinkey, James Alexander and Vernon Clark, who were apparently indigent and living in San Diego. According to Mr. Miller, the trial judge had warned that EEOC's cause of action would be dismissed if the

witnesses did not appear on February 12. "Letters of Invitation for Travel," dated January 8, 1979, were issued to Messrs. Evans, Barker, and Pinkey, and possibly to Messrs. Alexander and Clark. These letters read in part:

Per Diem: Per diem is authorized for cost of lodging \$32.40 including tax plus \$12.60 per day for food. Since lodging is being paid by Purchase Order traveler will only claim up to \$12.60 for food expenses. Claim to be submitted on SF-1012 to include copy of airline ticket and itemized daily food expenses. Receipts required for miscellaneous expenses exceeding \$10.00.

In addition, each of the witnesses was listed on a Government Transportation Request (GTR) for air transportation between San Diego and San Francisco.

On February 11, 1979, the day the witnesses were to travel to San Francisco, Pacific Southwest Airlines (PSA) in San Diego refused to honor the GTR. At that point, according to the submission of Mr. Miller, the following occurred:

I paid the airfare of Charles Barker, Ralph Evans, and Samuel Pinkey, to attend the hearing in San Francisco. Two other witnesses, James Alexander and Vernon Clark became disgusted with PSA's failure to honor the GTR and refused to attend the hearing. When Charles Barker, Ralph Evans, and Samuel Pinkey arrived in San Francisco on the evening of February 11, 1979, since they did not have any money, I gave them money for a meal and during a break in the trial on the next day, I advanced Barker, Evans, and Pinkey, a total of \$400 from my personal savings to sustain them during the period of the hearing.

When the hearings were over, I also paid for their hotel bills with my personal American Express card.

My expenses during this fiasco were as follows:

Round trip Air fare for Charles Barker, Ralph Evans, and Samuel Pinkey - \$304.00

Cash advances for Barker, Evans, and
Pinkey - \$460.00

Hotel bill for Barker, Evans, Pinkey and
a no show for James Alexander - \$398.84.

In support of his claim, Mr. Miller supplied the
following receipts:

1. A credit card receipt in the amount of
\$304 reflecting Mr. Miller's payment of the
air fare of Messrs. Barker, Evans, and
Pinkey.
2. Hotel bills and credit card receipts in
the amounts of \$154.12, \$147.22, and \$97.50,
reflecting Mr. Miller's payment of the lodg-
ing and meal expenses of Messrs. Barker,
Evans and Pinkey.
3. A handwritten receipt in the amount of
\$80 signed by Mr. Barker, in the amount of
\$80 signed by Mr. Evans, and in the amount of
\$300 signed by Mr. Pinkey, reflecting the
money advanced by Mr. Miller for "subsistence
and witness fees."

Mr. Miller has also provided three Standard Form 1157's,
"Claim for Fees and Mileage of Witness," signed, but not
completed, by Messrs. Barker, Evans and Pinkey.

Discussion

It is a well established rule of this Office that some-
one who makes a payment from personal funds, ostensibly on
behalf of the Government, which he or she is not legally
required or authorized to make (termed a "voluntary credi-
tor"), may not generally claim reimbursement from the Gov-
ernment. 33 Comp. Gen. 20 (1953). However, there are
situations in which reimbursement is permissible. In a
recent decision, 62 Comp. Gen. 419 (1983), we reviewed the
basis for the rule and established guidelines for its appli-
cation to expenditures of personal funds to acquire goods or
services for official use.

The guidelines we set forth in 62 Comp. Gen. 419 pro-
vided that a threshold test of "public necessity" must be
met before a voluntary creditor may be reimbursed. "The
purpose of this test is to limit reimbursement to cases

where there is a real need to act without delay to protect a legitimate Government interest," 62 Comp. Gen. at 424. If the public necessity test is satisfied, the agency should then ask whether (1) the procurement of the services in question was otherwise authorized and could have been paid by the agency if the voluntary creditor had not done so, and (2) whether the costs incurred were reasonable.

In the case at hand, it seems clear that Mr. Miller's payment of the air fare of the EEOC witnesses does amount to an expenditure made in a case of urgent public necessity. The refusal of the airline to accept the GTR was not foreseeable. Further, the trial judge's warning that the EEOC's cause of action would be dismissed if the witnesses were not produced created a situation in which immediate action was necessary to protect an important Government interest. Further, the purchase of the airline tickets by EEOC would have been authorized and the purchase price was the standard commercial fare. Accordingly, Mr. Miller may be reimbursed for the \$304 he spent to buy the air tickets.

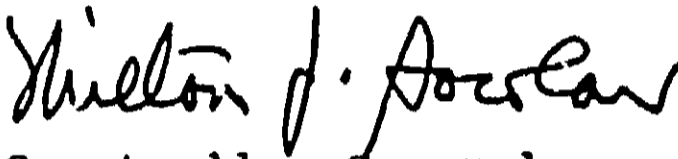
The certifying officer asks whether the fact that a GTR was not used precludes reimbursement. The Federal Property Management Regulations, 41 C.F.R. § 101-41.203-2, generally require use of a GTR to procure transportation services costing in excess of \$100. It is not Mr. Miller's fault that the GTR was not used. Proper procedures were attempted, but the airline at the last minute inexplicably refused to honor the GTR. In these circumstances, failure to use the GTR should not prejudice Mr. Miller's claim.

However, we are unable to determine, based on the record presented to us, whether Mr. Miller's payment of the witnesses' lodging and subsistence expenses was prompted by a "real need to act without delay to protect a legitimate Government interest," such that an exception to the voluntary creditor rule is warranted. The record in this regard is incomplete and confusing in several respects. For example, it is unclear whether realistic EEOC procedures were available to provide the witnesses with acceptable lodging and sufficient subsistence funds upon their arrival in San Francisco. Further, assuming such procedures were available, it is unclear whether there were any circumstances which prevented Mr. Miller or the witnesses from making use of those procedures.

Accordingly, based on the present record, we are unable to allow any portion of Mr. Miller's claim for reimbursement

of the witnesses' lodging and subsistence expenses,^{1/} Our decision in this regard, however, remains subject to reconsideration should either Mr. Miller or the EEOC provide further information sufficient to complete the record and permit a finding by this Office that an exception to the voluntary creditor rule is warranted.

Finally, the certifying officer has questioned the form of Mr. Miller's claim. As far as we are concerned, Mr. Miller's letter of January 18, 1983, constitutes a "claim," at least in the broad sense, since it is signed by the claimant and makes a request for payment in a sum certain. Failure to use some specific form need not be viewed as fatal where the claimant submits all required information in some other format. Of course, if EEOC wishes to insist on some prescribed form for claims of this sort, it is free to do so.

for 
Comptroller General
of the United States

^{1/} We note in passing that much of this portion of Mr. Miller's claim, even if he were able to overcome the voluntary creditor rule, would be of doubtful validity. Many of the expenses "incurred" by the witnesses appear to be either unauthorized (long distance telephone calls, for example) or substantially in excess of applicable limits. See 28 U.S.C. § 1821 (1982). However, in view of our conclusions as stated in the text, there is no need to undertake an item-by-item analysis.