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DECISION

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

FILE: B-217564 **DATE:** February 28, 1986

MATTER OF: George C. Warner - Reconsideration

DIGEST: A Comptroller General decision sustained the Claims Group's settlement disallowing a former Agency for International Development employee's claim for additional payments on account of the sale of his automobile overseas. The settlement sustained a Department of State determination under its policy against profiteering to exclude all but the constructive commercial transportation cost from the transportation factor of the automobile's acquisition cost. While the former employee claims that additional travel expenses incurred in personally driving an automobile from Germany to India while on leave should have been included, on review the claim is rejected in view of the authority of local officials to make determinations under this Department of State regulation.

A former employee of the Agency for International Development asks for reconsideration of our decision in George C. Warner, B-217564, August 13, 1985. Upon reconsideration we cannot pay Mr. Warner's claim because he has presented no evidence that our decision was based on errors of law, or factual inaccuracies.

Facts

The matter concerns the Department of State's interpretation and implementation of its policy in Foreign Affairs Manual Circular No. 378 (February 1, 1966), against profiteering by employees who sell personal property brought into foreign countries under import privileges. The policy is enforced by recovering from the employee the amount by which the sales price of an item of personalty exceeds its acquisition cost. This claim arose from the employee's disagreement with the agency's determination that the transportation cost factor in acquiring an automobile did not include actual travel expenses he incurred in driving it from West Germany to India. The decision was based on a record that provided

no basis for us to set aside the agency's decision to retain $1,725.04 from the sale of the automobile, as excess proceeds. The agency's determination regarding transportation costs was that no further transportation costs should be allowed in computing the acquisition cost because Mr. Warner had been reimbursed the constructive cost of transporting the vehicle by commercial means in connection with his travel to Stuttgart to pick up the vehicle and drive it to New Delhi.

Discussion

Mr. Warner reiterates his contentions that his costs for driving the vehicle were greater than the reimbursement already allowed. He points out that he submitted an account of his expenses related to transportation of the vehicle which separated the items of expense which were primarily for pleasure or for rest stops. He did not include those expenses in the computation of the travel costs claimed. He states also that the purpose of the trip was to assure the safe movement of the vehicle which could not be assured had it moved through commercial means.

He contends that some employees have been allowed actual expenses involved in driving an automobile to an overseas post in connection with determinations under Circular No. 378. He further contends that Department of State employees are not necessarily limited to the least-cost method of travel; therefore, the agency should not have read the low-cost principle (here, constructive commercial cost) into the agency's profiteering regulations.

He also says that he performed the travel in reliance on advice received from an agency controller who informed him that he could recover the difference between his actual expenses for the travel involved and the constructive commercial cost of transporting the automobile, which was the limit on his reimbursement from the proceeds of sale.

This case does not involve the computation of allowable travel expenses since the travel was performed for the employee's pleasure and to obtain an automobile for use at his post of duty outside the United States. The argument arises because he sold the automobile about 3 years after acquiring

it for a price well in excess of the purchase price. For diplomatic reasons the Department of State has found it necessary to prevent employees who are stationed outside the United States from making a profit from the sale of automobiles and other goods brought to their overseas posts under import privileges resulting from their official status. Failure to follow the guidelines will result in severe disciplinary actions.

The determination of what amounts to a profit is the responsibility of the ambassador at the post concerned working through a sales committee which he appoints. The administration of the program is under the general rules set forth in Foreign Affairs Manual Circular No. 378, but the details of operation are left to the local ambassador through regulation and the sales committee. We are not in a position to question determinations made under that circular. As an employee of AID, Mr. Warner was required to comply with the regulations if he sold an automobile overseas. It is clear from Circular No. 378 that the determination of what sales will be allowed and what is considered the employee's profit is the responsibility of local officials taking into consideration all of the surrounding circumstances.

In this case the local officials used the constructive cost that would have been involved in transporting the automobile to the employee's duty station as the measure of his cost. Any remaining cost was thus classified as a cost for the employee's pleasure trip and for stopovers during the trip to obtain the automobile. The employee itemizes more expenses as related to the cost of transporting the automobile, essentially including all expenses and estimated costs as attributable to that purpose except those clearly resulting from stopovers and the fact that his wife accompanied him on the trip.

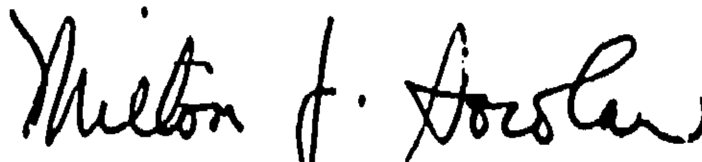
Since the local authorities have determined what was appropriate to include as the cost of acquisition of the automobile and since that determination was predicated upon a reasonable ground, we will not substitute our judgment for that of the individuals made responsible for it by the applicable State Department regulation.

Regarding the advice given Mr. Warner, even if a Department of State employee provided erroneous information concerning agency travel policy, it is a well-established

principle of law that in the absence of specific statutory authority, the United States is not responsible for the erroneous acts of its officers, agents, or employees, even though committed in the performance of their official duties. Joseph A. Kiehl, B-213833, May 29, 1984.

The final contention made by Mr. Warner is, even if true, irrelevant to the merits of his claim. He asserts that there were different reasons provided in support of our Claims Group's settlement and our decision. We point out that decisions of the Comptroller General are deliberated independently of the adjudication of claims; however, while in this case the general elements may have been given different emphasis, they both rest on the fundamental principle that in the absence of clear and compelling evidence to the contrary the factual determinations made by an agency in the consideration of individual claims are not subject to reversal by this Office. Further, appropriate deference is given to agencies in the interpretation and implementation of their own policies.

Accordingly, upon reconsideration the claim is denied.



Acting Comptroller General
of the United States