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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wayne G. Kirkegaard - Reimbursement of Travel Expenses - Government Vehicle Available

File: B-223537

Date: May 21, 1987

DIGEST

An employee who performed temporary duty travel used his privately owned vehicle (POV) for that purpose as a matter of personal preference and claims reimbursement at 20.5 cents a mile on the basis that his travel authorization specified POV reimbursement to be in lieu of common carrier travel. Travel order specified 9.5 cents a mile, but agency admits that a clerical error was made in that the 9.5 cent rate was typed in the wrong space. Employee was committed to the use of a government-furnished vehicle for temporary duty travel, if available, and he was informed before travel was performed that such a vehicle was available. Under the Federal Travel Regulations reimbursement for POV use in lieu thereof was properly limited to 9.5 cents a mile. Although errors on travel orders may be corrected after travel is performed under certain circumstances, the travel order here specified the correct mileage rate and the use of the wrong space was harmless error.

DECISION

This decision is in response to a request from the Director, Division of Accounting, Fiscal and Budget, Region VII, of the Department of Health and Human Services (HHS). It concerns the mileage reimbursement entitlement of one of its employees while using his privately owned vehicle (POV) for temporary duty travel. The question is whether the employee may be reimbursed at the higher rate for POV use in lieu of common carrier costs or at the lower rate for POV use in lieu of use of a government-furnished automobile. For the reasons that follow, we conclude that he is entitled to reimbursement at the lower rate.

Mr. Wayne G. Kirkegaard, an employee of the Health Care Financing Administration (HCFA), Kansas City, Missouri, was authorized to perform temporary duty travel to Sioux City, Iowa, during the period February 24-28, 1986.

Following completion of that travel, Mr. Kirkegaard claimed a mileage reimbursement entitlement of 20.5 cents a mile. A suspension notice was issued to him explaining that the mileage reimbursement portion of his travel voucher was based on his travel order limitation of 9.5 cents a mile.

Mr. Kirkegaard has now reclaimed the additional mileage amount. He argues that, according to the travel authorization issued to him, he was permitted to use a POV in lieu of common carrier use and that it was deemed to be advantageous to the government. While the mileage rate for POV use was specified in the travel authorization as 9.5 cents a mile, he contends that it was the incorrect rate. He states that, according to the HCFA Regional Operating Procedures Memorandum Number 0301-9, March 22, 1985, the mileage rate for POV use in lieu of a common carrier is 20.5 cents a mile. In further support of his position that he was entitled to the rate for POV use in lieu of common carrier use, Mr. Kirkegaard states that another employee who traveled to the same destination was authorized travel by common carrier. He adds that he and the other employee were directed to return to their duty station in Mr. Kirkegaard's POV at the conclusion of the temporary duty. He expresses the view that this established that use of his POV was in lieu of common carrier and constituted a determination that its use was more advantageous to the government.

In response to Mr. Kirkegaard's contentions on reclaim, the agency provides the following explanation. The HCFA leased five vehicles from the General Services Administration (GSA) and its employees were directed to use these vehicles for official travel whenever possible. Further, pursuant to section 3.D.5., of Chapter 4-20 of the HHS Travel Manual, a group of employees were committed to use the GSA cars because of the amount of travel they perform. Mr. Kirkegaard was one of that group of employees.

The agency says that sometime near the end of January 1986 Mr. Kirkegaard was advised that he would be required to make a trip to Sioux City in February. At that particular time, it appeared that due to other previously scheduled commitments, none of the leased vehicles would be available for Mr. Kirkegaard's use at the time of his trip to Sioux City. He was so informed and instructed to use common carrier. However, Mr. Kirkegaard decided to use his POV for personal reasons.

Shortly thereafter, and before the travel authorization was issued to him, one of the leased vehicles became available for his use. He was informed by the administrative officer of the change. He, in turn, advised that he still preferred using his own POV. Mr. Kirkegaard was then informed that if he used his POV rather than using the GSA vehicle his mileage reimbursement would be limited to 9.5 cents a mile since he was one of the group for whom use of those vehicles was reserved. His travel orders were prepared designating a 9.5 cents a mile reimbursement limitation.

RULING

It is well established that a travel authorization may not be modified retroactively so as to increase or decrease traveler rights or benefits after travel has been performed. However, we have recognized several exceptions to that rule. When an error is apparent on the face of the orders or when all the facts and circumstances clearly demonstrate that an error has been committed in preparing the orders, the orders may be corrected to show the true intention. 54 Comp. Gen. 638 (1975); Dr. Sigmund Fritz, 55 Comp. Gen. 1241 (1976). Also, where the provisions of a travel order are clearly in conflict with a law, agency regulation or instruction, or authorize a rate or reimbursement other than that prescribed, the orders may be corrected. Lynn C. Willis, 59 Comp. Gen. 619 (1980); B-183886, July 30, 1975. However, the error in the present case was harmless and does not negate the specific reference in the travel order to a rate of 9.5 cents a mile for Mr. Kirkegaard's use of his POV.

Section 5704 of title 5, United States Code, provides in part:

> "(a) Under regulations prescribed * * * in any case in which an employee who is engaged on official business for the Government chooses to use a privately owned vehicle in lieu of a Government vehicle, payment on a mileage basis is limited to the cost of travel by a Government vehicle."

The regulations referred to and applicable here are those contained in Chapter 1 of the Federal Travel Regulations, FPMR 101-7, incorp. by ref., 41 C.F.R. § 101-7.003 (1985) (FTR) as amended, in part, by GSA Bulletins FPMR A-40 (Supp. 5, May 20, 1983; and Supp. 6, June 19, 1983).

Paragraph 1-4.4c of Supp. 5, FTR, provides:

> "c. Partial reimbursement when Government automobile is available. When an employee who is committed to using a Govenment-furnished automobile, or who because of the availability of Government-furnished automobiles, would not ordinarily be authorized to use a privately owned conveyance instead of a Government-furnished automobile nevertheless requests use of a privately owned conveyance, reimbursement may be authorized or approved. The rate of reimbursement shall be 9.5 cents per mile, which is the approximate cost of operating a Government-furnished automobile, fixed costs excluded."

Thus, under the statute and the regulations, those employees who are directed to use government-furnished vehicles whenever available, are limited to 9.5 cents a mile where they use a POV instead as a matter of personal preference.

It is true that Mr. Kirkegaard initially received verbal authorization to use a common carrier since all the government-furnished vehicles were scheduled for use by others. It is also true that he elected at that time to use his POV for personal reasons which would have entitled him to receive 20.5 cents a mile not to exceed common carrier costs. However, Mr. Kirkegaard was informed several times before he traveled that a government-furnished vehicle had become available and that if he used his POV his mileage reimbursement would be limited to 9.5 cents a mile. Mr. Kirkegaard confirms this understanding. Therefore, it is our view that the mere fact that the lower rate (9.5 cents) was inadvertently typed in the space associated with the incorrect mode of travel in item 11 of his travel orders does not provide a basis for entitlement at the higher rate.

With regard to Mr. Kirkegaard's argument that, because he was directed by his agency to transport another employee in his POV for the return travel, such action constituted an administrative determination that use of a POV in lieu of the other employee's use of a common carrier was advantageous to the government, we disagree. If the agency, in fact, directed Mr. Kirkegaard to transport another employee in his

own POV, it erred in doing so. An agency cannot require two or more employees to travel together in the POV of one of them for the performance of either permanent or temporary duty travel. See 53 Comp. Gen. 67 (1973); B-191960, July 14, 1978. Notwithstanding that, it is our view that such error has no bearing on Mr. Kirkegaard's claim since his reimbursement rights are clearly delineated by statute and regulations.

Accordingly, the agency action limiting Mr. Kirkegaard's mileage reimbursement to 9.5 cents a mile was proper and is sustained.

Milton J. Socolar

Acting Comptroller General
of the United States