
Memorandum

Date: May 14, 1993

To: Director, Claims Group, GGD

From: General Counsel - James F. Hinchman

Subject: [REDACTED], B-247573-O.M.

Attached is your claim file, Z-2862258, on the subject case. For the reasons stated below, we conclude that the claim should be denied, but that repayment of the erroneous travel advance (which covers almost the full amount of the claim) should be waived.

[REDACTED], a civilian employee of the U.S. Army Corps of Engineers, claims reimbursement of lodging expenses in the amount of \$210 incurred incident to attending a meeting at her permanent duty station in San Francisco, California. The Corps District Engineer had requested [REDACTED] and another civilian employee to attend the 1989 Earthquake Engineering Research Institute Annual Meeting, held February 9-11 at a Holiday Inn in San Francisco, because the District was developing several earthquake response plans for the San Francisco Bay Area.

The agency issued travel orders to [REDACTED], along with a \$200 travel advance, authorizing her to stay overnight at a hotel during the meeting. This was based on an agency-approved request which stated that: (1) [REDACTED] did not drive due to an uncorrectable sight condition (she is legally blind); (2) the meeting sessions were to start as early as 7 a.m. and end as late as 9 p.m.; and (3) it would be impossible for [REDACTED] to arrive at the meeting site so early or obtain transportation to her home at night due to



minimal public transit between the meeting site and her home. The request also stated that the final day's session was on a Saturday and there was no early morning public transit on that day.

On February 15, 1989, [REDACTED] submitted a travel voucher claiming \$210 for lodging expenses incurred on February 8, 9 and 10. The Sacramento District Finance and Accounting Officer denied [REDACTED] request for reimbursement because the Federal Travel Regulations provide that temporary duty expenses shall not be allowed within the limits of the employee's permanent duty station. 41 C.F.R. § 301-7.5(a) (1991). See also 2 Joint Travel Regulation (2 JTR), para. C4552-3 (Ch. 304, Feb. 1, 1991).

In submitting the claim to our Office, the Acting Chief, Finance and Accounting Division, noted that there was sufficient justification to deny [REDACTED] claim for temporary duty expenses at her permanent duty station, but that "the circumstances surrounding [REDACTED] request for reimbursement, i.e., [REDACTED] physical handicap, could be sufficient to allow payment of TDY expenses."

As noted above, the governing regulations prohibit payment of per diem or subsistence expenses to a civilian employee at the employee's official duty station. Our decision have consistently applied this prohibition regardless of unusual working conditions. See, e.g., [REDACTED], 68 Comp. Gen. 46 (1988); 53 Comp. Gen. 457 (1974); [REDACTED] B-223500, Mar. 16, 1987. See also 68 Comp. Gen. 502, 505 (1989); B-247730, Sept. 21, 1992.

The question raised by this claim is whether the prohibition can be overcome on the basis of [REDACTED] disability. In this regard, [REDACTED] claim submission cites regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 701 et seq., which provide that agencies "shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped . . . employee unless the agency can demonstrate that the accommodation would impose an undue hardship on the operation of its program." 29 C.F.R. § 1613.704.

The extent to which federal agencies are required or authorized to make reasonable accommodations to disabled employees involves potentially difficult issues in some contexts, particularly where the accommodation would conflict with a specific regulatory prohibition. However, we question whether the limited record on which this claim is based presents an appropriate context for addressing such issues.

It is unclear that the decision to authorize [REDACTED] to stay at the hotel during the meeting related directly to her disability. The essential problem appears to have been the lack of available public transit to and from the meeting. However, this circumstance would have similarly affected any attendee who had to rely on public transit for any reason. Nor is there any indication in the record that the agency considered other, less costly options than paying for a hotel room, such as reimbursing [REDACTED] for cab fare.

In short, given the sparse record before us, we conclude that [REDACTED] claim for lodging expenses is too doubtful to allow on the basis of reasonable accommodation. As noted previously, however, [REDACTED] received a \$200 travel advance. While this payment must be regarded as erroneous, it is subject to waiver. See 4 C.F.R. § 91.4(d).

Waiver of a federal employee's liability arising out of an erroneous payment of travel expenses--including in a case such as this an erroneous travel advance--is appropriate where collection would be "against equity and good conscience and not in the best interests of the United States," and there is no indication of "fraud, misrepresentation, fault, or lack of good faith" on the part of the employee or any other person having an interest in obtaining a waiver of the claim. 5 U.S.C. §§ 5584(a)(1), (b) (1988). See also 68 Comp. Gen. 462, 463 (1989); 67 Comp. Gen. 496, 497 (1988). We believe [REDACTED] case meets the waiver criteria.

Waiving [REDACTED] \$200 travel advance will leave her with a cost of \$10 to absorb. However, this probably is less than the cost she would have incurred for transportation incident to the meeting had public transit been readily available.

Attachment