



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Peter M. Spokowski

File: B-244343.2

Date: November 2, 1995

DIGEST

Where agency alleges employee has submitted a voucher containing fraudulent temporary quarters subsistence expenses (TQSE), agency must provide evidence sufficient to overcome presumption of honesty and fair dealing. Agency found that employee submitted temporary duty (TDY) claims for meals consumed while away from his duty station, and later submitted overlapping claims on his TQSE voucher for meal expenses at this duty station for dates coinciding with periods of TDY travel. The Army also questioned other claimed expenses. Agency finding of fraud cannot be supported on basis of the record presented. Employee is entitled to be reimbursed reasonable subsistence expenses as determined by agency.

DECISION

Mr. Peter M. Spokowski requests reconsideration of our Claims Group Settlement Certificate Z-2866727, dated April 29, 1991. In addition, he requests waiver of indebtedness and all interest, penalty and administrative costs incurred on an advance of temporary quarters subsistence expenses incident to a permanent change of station from Indian Head, Maryland, to Newport News, Virginia.

By travel order dated March 9, 1989, Mr. Spokowski was directed, as an employee of the Department of the Navy, to make a permanent change-of-station from Burlington, Massachusetts, to the Naval Ordnance Station, Indian Head, Maryland. All expenses claimed have been paid.¹

¹The only remaining issue in connection with this first move is the proper calculation of the relocation income tax allowance. On this issue, we reiterate the conclusion of our Claims Group that the Army would be well advised to recalculate the relocation income tax allowance based on a review of Mr. Spokowski's documentation, following the applicable regulations.

Later in 1989, Mr. Spokowski transferred to the Department of the Army and was authorized to make a second move, a permanent change-of-station from Maryland, to Newport News, Virginia. Incident to this move, he was authorized allowances for real estate expenses, including relocation income tax allowance, shipment and temporary storage of household goods, and temporary quarters subsistence expenses. The Army paid the real estate and moving expenses. It also advanced Mr. Spokowski \$13,635.00 in three payments to cover temporary quarters subsistence expenses. From January through April 1990, he occupied temporary quarters in Williamsburg, Virginia, near his new duty station in Newport News, and moved into a permanent residence on May 1, 1990. Shortly thereafter, he submitted a voucher to support his expenditure of the funds advanced to him.

The Army reviewed his vouchers and concluded initially that his claims for meal expenses were not adequately supported. Mr. Spokowski did not keep records of actual meal expenses, as required by the Army, during the period covered by his temporary quarters allowance. Instead he used an estimate of the daily cost of restaurant meals for the Williamsburg area and claimed the same amount each day for himself and his wife and daughter. His temporary quarters contained a kitchen, but he states he and his family consistently ate out. The only receipts provided by Mr. Spokowski covered meals consumed while he was on temporary duty.

The Army believed further the laundry expense claims to be excessive. Mr. Spokowski also used a daily average as the basis for claiming coin operated laundry expenses. The Army believes the average to be excessive. His temporary quarters did not contain a washer or dryer.

Suspecting fraud, the Army initiated a criminal investigation. The Army's report, dated February 19, 1991, did not address the Army's initial concerns about certain meal and laundry claims. However, it found that Mr. Spokowski was, by admission, in a temporary duty status on several occasions during the period covered by his authorized TQSE, and that he failed to exclude his TDY expenses (incurred away from his duty station) from his subsequent claim for TQSE (expenses incurred while at his duty station). At times, he was accompanied on temporary duty assignments by his wife and daughter, but did not indicate their presence on his vouchers, and claimed TQSE meal expenses for them as though they had remained in the temporary quarters at his duty station during periods when they accompanied him on travel away from his duty station. By the Army's calculations, the overlapping claims totalled \$1,215.39. The report concluded that Mr. Spokowski's failure to exclude the periods of temporary duty from his claim for temporary quarters subsistence, resulting in the overlapping claims, constituted an attempt to defraud the government.

By letter dated June 28, 1991, the Army informed Mr. Spokowski that, of the \$13,635.00 advanced to him, it had allowed \$1,503.47, but was denying the remaining

\$12,131.53, consisting of amounts claimed for temporary quarters subsistence expenses, based on the rule that fraud in connection with any part of the claimed expenses taints the entire claim. The Army established a debt of \$12,131.53 owed by Mr. Spokowski to the government, and on the day he was informed of this debt, he resigned from the Army. The Army withheld \$6,010.34 from his final pay. As of June 1994, Mr. Spokowski had repaid \$1,632.00, leaving a balance of \$5,992.66 plus penalties and fees.

In a settlement certificate dated April 29, 1991, our Claims Group concurred with the Army that fraud in connection with expenses claimed incident to the move to Virginia tainted the claim for temporary quarters subsistence expenses.²

In October 1991, Mr. Spokowski requested that the General Accounting Office (GAO) reconsider its decision, and also requested that GAO waive the remainder of his debt. We informed Mr. Spokowski in November 1991 that we had requested further documentation from the Army, and told him that in light of the Army's indication that their reply would be delayed, we were closing our file on the case pending receipt in the additional documentation. In March 1994, the Army sent a notice to Mr. Spokowski confirming the debt and seeking payment. In late 1994, Mr. Spokowski again appealed to GAO for a waiver of the debt. We reopened the case at that time.

ANALYSIS AND CONCLUSION

This Office will independently consider all the evidence to determine if fraud exists. 57 Comp. Gen. 664, 667 (1978). In our decision 61 Comp. Gen. 399 (1982), we restated that the burden of establishing fraud rests upon the party alleging it, and must be proven by evidence sufficient to overcome the existing presumption of honesty and fair dealing. Circumstantial evidence is competent for this purpose, provided it affords a clear inference of fraud and amounts to more than a suspicion or conjecture. If, in any case, the circumstances are as consistent with honesty and good faith as they are with dishonesty, the inference of honesty is required to be drawn. Accordingly, a mere discrepancy or inaccuracy, in itself, cannot be equated with an intent to defraud the government.

In 57 Comp. Gen. 664, we acknowledged the difficulty of prescribing exact rules concerning fraud or misrepresentation since the question of whether fraud exists depends on the facts of each case. We believe that, although it is the employee's responsibility to accurately complete a travel voucher to ensure proper payment, it may not be assumed automatically that an employee who has not observed all the

²The rule is that a fraudulent claim taints the entire claim for per diem on days for which fraudulent information is submitted. 59 Comp. Gen. 99 (1979).

requirements of the Federal Travel Regulation in completing a voucher is filing a fraudulent claim. It should be borne in mind that innocent mistakes are made and shortcuts taken in the completion of vouchers. Not every inaccuracy on a voucher should be equated with an intent to defraud the government. Generally, where discrepancies are minor, small in total dollar amounts, or where they are infrequently made, a finding of fraud would not normally be warranted absent the most convincing evidence to the contrary. By the same token, where discrepancies are glaring, involve greater sums of money, or are frequently made, a finding of fraud could be more readily made absent a satisfactory explanation from the claimant.

Based on our review of the evidence in the record, we are not convinced that the Army has met its burden of establishing fraud. The Army investigative report states that Mr. Spokowski claimed reimbursement for expenses incurred on days he was in temporary duty status (including lodging and meals away from his duty station), while at the same time claiming temporary quarters expenses, including meals, as though he had not left his duty station. On certain occasions, his wife and daughter accompanied him on temporary duty. Meal expenses claimed on their behalf as temporary quarters expenses (for meals consumed at his duty station), but for days during periods when they accompanied him on TDY away from the duty station, added to the Army's concern. The Army report takes into account two factors. The first is that, in signing the vouchers in question, Mr. Spokowski indicated full compliance with the instructions, yet had not informed the finance office of his temporary duty status on certain dates. The second is that because Mr. Spokowski had made prior changes of station, he was familiar with the requirements for submitting a claim. Given this familiarity, the report states, he should have been aware of the need to separate temporary duty status claims from claims for temporary quarters subsistence expenses, and to avoid submitting overlapping claims. Citing these factors, the Army found intent to defraud the government on Mr. Spokowski's part.

Claims covering his family's TQSE expenses for days while he was on temporary duty in other locations are clearly permissible. However, claims for TQSE meal expenses for himself for the days he was in temporary duty status, or for his family when they accompanied him on this travel, clearly are not allowable, but if submitted, do not in themselves establish fraud. In our view, the factors on which the Army relies in concluding that these actions constitute fraud are not sufficient, without more, to rebut the presumption of honesty. Mr. Spokowski's method of claiming TQSE expenses -- mechanically listing identical amounts each day for meals over the entire 120-day period of TQSE -- allowed room for mistake, error, or oversight on his part, particularly given the fact that he submitted the TQSE voucher in question several weeks after he submitted the last of five TDY vouchers

containing overlapping claims.³ Based on the record before us, we cannot conclude that his failure to exclude TDY expenses from his TQSE voucher was anything more than error on his part.

However, a finding that no fraud was committed does not mean that Mr. Spokowski necessarily is entitled to payment on all of his claims. Certainly any overlapping claims should be excluded. Moreover, an employee is expected to exercise the same care in incurring expenses that a prudent traveler would incur if traveling on personal business. It is the employee's responsibility to provide enough information to show that the expenses claimed were actually incurred. The fact that the expenses claimed are within the maximum amounts specified in Federal Travel Regulation does not automatically entitle the employee to reimbursement. It is the responsibility of the employing agency, in the first instance, to determine that subsistence expenses are reasonable. Thomas S. Phillips, B-233391, Oct. 4, 1989. An evaluation of reasonableness must be made on the basis of the facts in each case. 52 Comp. Gen. 78 (1972). Accordingly, the agency may reduce the amount claimed to a reasonable sum as determined on the basis of the evidence in an individual case. Such a determination may be made on the basis of statistics and other information gathered by government agencies regarding living costs in the relevant location. 55 Comp. Gen. 1107 (1976).

The Army should first review its files on the matter to determine whether there exists evidence of fraud on the part of Mr. Spokowski beyond the evidence presented in the record before us. If no such evidence exists, the Army should then proceed to review the claims presented by Mr. Spokowski on an item-by-item basis, and allow those items it determines to be reasonable and prudent for a family of three in Williamsburg, Virginia, in 1990, for which Mr. Spokowski has not already been paid. If any debt remains after this review, Mr. Spokowski is obligated to repay it.⁴ If the allowable expenses exceed the amount of the debt, the Army will owe an amount to Mr. Spokowski.

³Mr. Spokowski submitted claims for the TDY travel in question on January 29, February 16, March 25, April 9, and April 26, 1990. He submitted his TQSE claim on May 16, 1990.

⁴If a debt remains, it may not be waived. A travel advance provided an employee incident to a permanent change-of-station is not an erroneous payment subject to a consideration for waiver. See, Charles E. Clark, B-207355, Oct. 7, 1982. Consequently, a request for waiver of indebtedness for the balance of a travel advance plus interest, penalties, and administrative costs must be denied.

Accordingly, we reverse our Claims Group's settlement and return this matter to the Army for action consistent with this decision.

/s/Seymour Efros
for Robert P. Murphy
General Counsel