Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Donna K. Buford

File: B-260999

Date: October 17, 1996

DIGEST

The employee's reclaim voucher for three nights' noncommercial lodging with a friend may not be set off against the $200 advance owed by the employee to the agency because the employee has not submitted documents showing the additional expenses incurred by her hostess. The employee's transportation expenses incurred by commuting from the suburb to the temporary duty station may be set off against the $200 advance in an amount not to exceed the expenses to which the employee would have been entitled had she obtained lodging in the high cost area.

DECISION

This advance decision is made at the request of Ms. Willie M. King, an authorized certifying officer, U.S. Equal Employment Opportunity Commission, to determine whether she may allow for setoff certain reclaim vouchers submitted by an employee in defense of the agency's efforts to collect the balance due of a $200 travel advance. For the reasons stated below, the employee's reclaim voucher for three nights' noncommercial lodging may not be set off against the advance, but her transportation expenses incurred by commuting from the suburb to the temporary duty station may be set off against the $200 advance in an amount not to exceed the expenses to which the employee would have been entitled had she obtained lodging in the high cost area.

BACKGROUND

From May 12 through May 15, 1980, the employee, Donna K. Buford, traveled on temporary duty from Atlanta, Georgia, to Washington, D.C., on official business. The employee's travel order states that she was authorized actual expenses at the rate of $50 per day and was authorized the use of taxicabs when necessary. While on temporary duty in Washington, D.C., the employee stayed with a friend in a private home in Columbia, Maryland, for three nights and commuted to work by train. She paid $90 to her host for three nights' accommodations and $14.90 for train transportation to commute to work from Columbia, Maryland, to Washington, D.C.

The employee indicated that her stay in this home was a personal accommodation rather than a business arrangement and that the owner of the home did not rent out the room as a general practice. According to the employee, $90 paid to the owner represented $30 per night and this amount was based on the fact that the owner incurred additional expenses as a result of the employee's stay, such as the owner's time and expense in laundering of linens and towels, increased use in utilities, the cost of driving the employee by privately owned vehicle from the private home to the train station, etc. The employee, however, submitted no documentation for any of these additional expenses with either her original travel voucher or with her subsequent reclaim voucher.

The agency denied the $90 for lodging on the basis that the employee's per diem was limited to 40 percent of the locality rate when an employee obtained noncommercial lodging. The agency denied the $14.90 for train fare on the basis that such reimbursement was limited to the constructive cost of what it would have cost to commute from lodging in Washington, D.C., the temporary duty station, to the actual place of business.

In February 1995, the employee submitted reclaim vouchers for $90 and $14.90, respectively. The Director, Financial Management Division, requested an advance decision from our office to determine whether the reclaim vouchers in the amount of $104.90 could be set off against the $200 advance owed by the employee to the agency.

ANALYSIS

Ms. Buford's claim accrued in May 1980 at the time of travel. By statute, claims which are not received within 6 years after the date they first accrue, are barred. 31 U.S.C. § 3702(b)(1). However, under the doctrine of recoupment, the employee is not required to assert a claim against the United States in order to eliminate or reduce an indebtedness for an advance of funds under 5 U.S.C. § 5705.[1] The defense of recoupment, which applies specifically to attempts by the government to collect travel advances from employees so long as the defense arises out of the same cause of action, is never time-barred. Thomas R. Hopkins, B-195738, April 1, 1980. See also 63 Comp. Gen. 462 (1984), and 58 Comp. Gen 738 (1979).

The employee's travel order shows that the employee was authorized a maximum amount of $50 per day for actual subsistence expenses incurred, to cover lodging,

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[1]An advance of funds is, in effect, a loan obligation, based on the employee's prospective entitlement to reimbursement for allowable expenses after they are incurred. An advance does not necessarily guarantee that the employee will ultimately be reimbursed for all expenses incurred.

meals, and incidental expenses. The EEOC Travel Handbook, in effect at the time of travel, limited reimbursement for staying with friends or relatives to 40 percent of the locality rate in an actual subsistence area such as Washington, D.C., unless the employee submits evidence showing the additional expenses incurred by the host or hostess (EEOC Order 345). Since the record shows that Ms. Buford was allowed $79.20 against her $200 advance, we assume that she has been reimbursed at the 40 percent rate. Since she has not submitted documentation showing additional expenses incurred by her hostess, she is not entitled to additional reimbursement for her lodging expenses.

As for the $14.90 in train fare, the Federal Travel Regulations (FTR) (FPMR 101-7) ¶ 1-2.3 (May 1973) in effect at the time contemplated that a traveler will ordinarily lodge in close proximity to the temporary duty station. We held, however, that when an employee, assigned to temporary duty, effects an overall savings in travel expenses by obtaining lower cost lodging and subsistence in a suburban location, the additional transportation costs incurred by commuting from the suburb may be reimbursed in an amount not to exceed the expenses to which she would have been entitled had she obtained lodging in the high cost area. Roland E. Groder, B-192540, April 6, 1979.

It is evident that the employee saved government funds by staying in the suburbs and that she would have incurred higher lodging and transportation costs had she stayed in Washington, D.C. Therefore, we believe that she is entitled to be reimbursed for her commuting costs. In addition to the $14.90 train fare, Ms. Buford incurred $3.20 in metro fares. Therefore, the amount of $18.10 may be set off against her outstanding travel advance.

As for the employee's claim that she was erroneously advised of the agency policy concerning noncommercial travel, it is unfortunate when employees receive erroneous advice or are erroneously authorized certain allowances which in fact are not reimbursable. However, it is a well settled rule of law that the government is not estopped by the erroneous advice of its employees, a principle that has been affirmed by the U.S. Supreme Court. 56 Comp. Gen 131 (1976), and Schweiker v. Hansen, 450 U.S. 785 (1981).

Accordingly, the employee's commuting expenses of $18.10 may be set off against the balance of the $200 advance owed by the employee to the agency, but she is not entitled to setoff the additional $90 she reclaims for amounts paid to her hostess for lodging at her home.

/s/Seymour Efros
Robert P. Murphy
General Counsel