

DECISION



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

FILE: B-184175

DATE: June 8, 1979

MATTER OF: Brian E. Charnick and others -  
TDY near permanent duty station

DIGEST: Employees drove daily to a temporary duty site. Although mileage may be allowed for POV travel from residence to nearby temporary duty site, employees here are not entitled to payment since agency did not authorize mileage. Authorization in such situations is within the agency's discretion. Mileage erroneously paid to another employee similarly situated provides no basis for paying these claims.

The issues presented are whether mileage expenses incurred in traveling to a temporary duty site from employees' residences may be reimbursed where the employing agency has not authorized mileage and whether erroneous payment to one employee similarly situated provides a basis for paying the mileage expenses of other employees.

The claimants--Brian E. Charnick, Panfilo Tirabassi, Saul S. Schuster, Walter P. Lucas, Jerome J. Surrettsky--civilian employees of the Army, were permanently assigned to the Joint Tactical Communications (TRI-TAC) Office located at New Shrewsbury, New Jersey, a site which is considered a part of Fort Monmouth, New Jersey. During the period October 9, 1973, through March 30, 1974, the employees were assigned as members of the Source Selections and Evaluation Board (SSEB). The SSEB duty was performed in the Evans Area of Fort Monmouth, a distance of approximately 15 miles south of the main post. The Evans Area is located at a remote site with no public transportation. Each of the employees commuted daily from his permanent residence to the SSEB duty site by private automobile without reporting first to the permanent duty station.

In Matter of Brian E. Charnick, B-184175, August 5, 1975, we disallowed the claim for mileage expenses of Mr. Brian E. Charnick, upon the basis that it is discretionary with an agency to allow mileage from residence to a temporary duty station. It was pointed out that in exercising its discretion the agency should consider the interests of both the Government and the employee, citing 32 Comp. Gen. 235 (1952);

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B-177555, February 22, 1973, and 36 Comp. Gen. 795 (1957). In Charnick, we determined that since the authorization of travel allowances in such situations is a discretionary one, it is not within our jurisdiction to question the propriety of the refusal of an agency to authorize such expenses.

Subsequent to Charnick, the claim of Mr. Panfilo Tirabassi, Z-2578937, was presented to the Claims Division of this Office. Mr. Tirabassi was a member of the same SSEB board as Mr. Charnick and was also permanently assigned to TRI-TAC at Fort Monmouth. By settlement certificate dated May 11, 1978, Mr. Tirabassi's claim for mileage expenses for driving from his residence to the SSEB duty site from October 1973 to March 1974 in the amount of \$383.20 was allowed.

Mr. Charnick now asks for reconsideration of his claim, citing the payment to Mr. Tirabassi. Also, claims were received from Walter P. Lucas, Jerome J. Surretsky, and Saul S. Schuster, each being a member of the SSEB at Fort Monmouth at the same time as Charnick and Tirabassi and each claiming similar mileage expenses.

The established rule is that employees must place themselves at their regular places of work and return to their residences at their own expense, absent statutory or regulatory authority to the contrary. The increase in such expenses incident to overtime duty or other emergency conditions does not change the basic rule that the employee must bear the expense of travel between his residence and official duty station. B-190071, May 1, 1978, and B-185974, March 21, 1977.

When an employee is assigned to a nearby temporary duty post it is within administrative discretion to permit such employee an allowance for mileage without a deduction for the distance he would normally travel between his home and headquarters, and irrespective of whether he performs duty at his headquarters on that day. Administrative officials may refuse to authorize reimbursement for such expenses if no additional travel costs are incurred or may reimburse to the cost of travel between the employee's headquarters and his temporary post of duty.

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where appropriate, officials should exercise their discretion to restrict the amount of reimbursement by way of a reduced rate or distance when the employee performs work at a temporary duty post within a reasonable commuting area. Agency policy to regard such expenses as normal commuting expenses and application thereof must be reasonable. Officials are to give due consideration to the interests of both the Government and the employee. B-189061, March 15, 1978, and cases cited.

In the present case each of the employees drove from his residence to the temporary duty site a short distance from his permanent duty station. It was not unreasonable for the agency to make the determination that the mileage expenses be regarded as normal commuting expenses and failure to authorize a mileage allowance is not an abuse of the agency's discretionary powers. Since there is no authorization here for a mileage allowance we find no authority to require payment of the travel claims of these employees.

The provisions of 31 U.S.C. 71 (1976) require us to determine each person's entitlement to a payment from the United States on its own merits under the law. B-154330, August 16, 1968. Money paid out by the United States upon an erroneous determination of law by Government officers may be recovered back from the recipient. 22 Comp. Gen. 832 (1943); 31 Comp. Gen. 75 (1951); and 31 Comp. Gen. 177 (1951). Thus, the erroneous payment of a claim provides no basis for the payment of similar claims.

Accordingly, upon reconsideration, Charnick, supra, is affirmed. The claims of Saul S. Schuster and Walter P. Lucas, considered here for the first time are denied. The settlement of the Claims Division of this Office dated December 31, 1975, disallowing the claim of Jerome J. Bretsky is affirmed. The settlement of the Claims Division dated May 11, 1978, which certified for payment the amount of \$383.20 as reimbursement of mileage and tolls expenses to Panfilo Tirabassi being contrary to Charnick,

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pra, is overruled. The Claims Division will initiate collection of the sum of \$383.20.

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