

**DECISION**

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

**FILE:** B-213624

**DATE:** May 10, 1985.

**MATTER OF:** Civilian Employee of the Department of  
the Navy - Suspected Fraudulent Claim for  
Subsistence Expenses

**DIGEST:**

Agency recouped subsistence expenses advanced to an employee, determining that he had fraudulently claimed the payment of maid tips on each day of a 19-day temporary duty assignment. We find that the agency has sustained its burden of proving that the employee filed a fraudulent subsistence claim for one of the days, but that its evidence is insufficient to overcome the presumption of honesty and fair dealing in favor of the employee for the remaining 18 days. Accordingly, the employee may recover subsistence expenses for the 18 days which are not tainted by fraud. However, the agency may reduce reimbursement for maid tips if it determines that the claimed amounts are unreasonably high.

An employee of the Norfolk Naval Shipyard, Portsmouth, Virginia, appeals our Claims Group settlement dated December 28, 1982. In that settlement, our Claims Group concurred with the Department of the Navy's determination that the employee fraudulently claimed payment of tips to hotel maids and thereby inflated his claim for subsistence expenses on each day of a 19-day temporary duty assignment. For the reasons stated below, we reverse our Claims Group settlement in part and sustain it in part.

**BACKGROUND**

During the period December 1 to December 19, 1980, 21 employees of the Norfolk Naval Shipyard, including the subject employee, were assigned to perform temporary duty in Philadelphia, Pennsylvania.

All of the employees except the subject employee stayed at the Hilton Stadium Inn in Philadelphia for the

entire 19-day temporary duty assignment. The subject employee stayed at the hotel on December 1 and 2, 1980; but then secured lodgings in an apartment complex for the duration of the assignment. He claimed maid tips of \$2.25 and \$3.50 for the 2 days he stayed at the hotel, maid tips ranging from \$1.75 to \$5.50 for the next 16 days he resided in an apartment, and an \$11.25 charge representing "room service/tips" on the final day he stayed in the apartment.

Since each of the 21 employees claimed high amounts for maid tips, the Navy states that it suspected fraud and requested that the Naval Investigative Service (NIS) conduct an investigation of the claims. Based on the investigative reports, discussed in relevant part below, the Navy determined that all of the employees had fraudulently claimed the payment of tips to hotel maids and were liable to repay subsistence expenses for the tainted days. The subject employee was required to repay \$1,401.60, representing the total subsistence expenses he had claimed for the 19-day temporary duty assignment.

By settlements dated December 28, 1982, our Claims Group concurred with the Navy's conclusion that the employees had fraudulently claimed the payment of tips to maids at the Hilton Stadium Inn. Counsel for ten of the employees appealed the settlements. Among other arguments, the employees' counsel contended that our Claims Group incorrectly assumed that the subject employee stayed at the Hilton Stadium Inn during the entire 19-day assignment. Additionally, the employees' counsel stated that the Navy failed to afford the employees an opportunity to examine and rebut the contents of the NIS report.

By letter to the Navy, we remanded the employees' appeals and advised the agency to allow the employees an opportunity to examine the relevant investigative materials. At the same time, we informed the employees that they could resubmit their appeals to our Office after reviewing the investigative reports.

The Navy permitted the employees to examine the investigative materials, and then furnished us with comments responding to arguments raised by the employees'

counsel. In its comments, the Navy acknowledges that the subject employee's situation differs from that of the others because he stayed at the Hilton Stadium Inn for only 2 days, December 1 and 2, and then lodged in an apartment complex for the period December 3 to December 19. The Navy states that its evidence may be insufficient to establish that the employee fraudulently claimed maid tips during the period December 1 to December 18, but maintains that it has sustained its burden of proving that he fraudulently claimed a room service charge on December 19.

The subject employee resubmitted his appeal to our Office. This decision is limited to the subject claim.<sup>1/</sup>

#### DISCUSSION

In order to establish fraud which will support either the denial of a claim or recoupment action in the case of a paid voucher, our Office has observed that:

"\* \* \* the burden of establishing fraud rests upon the party alleging the same and must be proven by evidence sufficient to overcome the existing presumption in favor 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 suspicion or conjecture. However, if, in any case, the circumstances are as consistent with honesty and good faith as with dishonesty, the inference of honesty is required to be drawn." Charles W. Hahn, B-187975, July 28, 1977.

First, we will address the portion of the NIS report concerning the subject employee's 2-day stay at the Hilton Stadium Inn. This material contains summaries of interviews

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<sup>1/</sup> We decided the claims of two other appellants in B-213620, March 14, 1985, and B-213629, January 17, 1985.

with a day-shift maid and a night chambermaid who allegedly serviced the employee's room on the hotel's fourth floor and reportedly stated that they received no tips from that room. However, the report indicates that the day-shift maid refused to make a sworn statement that she did not receive tips claimed by the employee. Further, an affidavit prepared by the night chambermaid reveals that, during the period in question, she worked on the hotel's second floor and did not service any rooms on the fourth floor, where the subject employee resided. In view of this scant and ambiguous evidence, we conclude that the Navy has not sustained its burden of establishing that the subject employee fraudulently claimed the payment of tips to hotel maids on December 1 and 2, 1980.

The investigative materials pertaining to the employee's apartment lodgings do not contain any evidence that he fraudulently claimed expenses during the period December 3 to December 18, 1980. Although the Navy questioned the employee's payment of maid tips at the apartment complex, the assistant manager confirmed that maid service was available and that she had assigned two maids to clean the employee's apartment. Apparently, the maids who serviced the employee's apartment resigned prior to the Navy's investigation, and the investigators were unable to locate them for an interview. Accordingly, absent any direct or circumstantial evidence that the employee did not pay the maid tips he claimed, we find that the Navy has not substantiated its allegation that he fraudulently claimed expenses during the period December 3 to December 18, 1980.

We note, however, that the employee claimed an \$11.25 charge for "room service/tips" on December 19, 1980, the final day he stayed in the apartment. According to the NIS report, the assistant manager of the apartment complex stated that the complex does not offer room service. We find that the manager's statement supports a strong inference that the employee filed a fraudulent claim for room service on December 19, and the employee has not submitted any evidence to rebut that inference.

We have held that a fraudulent claim for any subsistence item taints the entire subsistence allowance

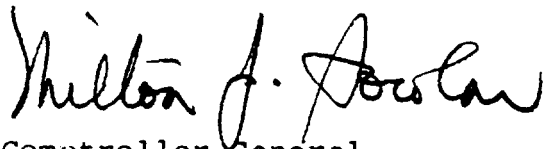
for that day. See 57 Comp. Gen. 664 (1978). The travel voucher may be separated into individual days, and reimbursement may be allowed for those days which are not tainted by fraud. See B-212354, August 31, 1983. Applying these rules, we hold that the subject employee may not recover any of the subsistence expenses he claimed for December 19, 1980. However, he may be paid subsistence expenses for each day during the period December 1 to December 18, 1980.

With respect to the subsistence expenses payable to the employee for the period December 1 to December 18, we note that his claim for maid tips amounts to \$57 and appears to be excessive. Generally, an employee is entitled to reimbursement for only reasonable expenses incurred during a temporary duty assignment, since travelers are required to act prudently in incurring expenses. See Micheline Motter and Linn Huskey, B-197621, B-197622, February 26, 1981. This principle is based on para. 1-1.3a of the Federal Travel Regulations, FPMR 101-7 (September 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1983), which provides:

"An employee traveling on official business is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business."

It is the responsibility of the employing agency, in the first instance, to determine whether claimed subsistence expenses are reasonable. See Motter and Huskey, above. Accordingly, the Navy should evaluate the reasonableness of the amounts the subject employee has claimed for maid tips, and make any appropriate adjustments for reimbursement purposes.

The employee's claim for subsistence expenses during the period December 1 to December 18, 1980, may be settled in accordance with the foregoing, and he should be refunded amounts which erroneously were collected from him by recoupment.

for   
Comptroller General  
of the United States