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DECISION



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

FILE: B-219051

DATE: November 27, 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 payment of tips to hotel maids on each day of a 19-day temporary duty assignment. Based on evidence in the record, we conclude that the agency has sustained its burden of establishing that the employee fraudulently claimed payment of maid tips. Accordingly, the employee may not recover any of the subsistence expenses recouped from him.

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 sustain our Claims Group settlement.

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.

The employees stayed at the Hilton Stadium Inn in Philadelphia, and claimed reimbursement for tips paid to hotel maids on each day of the temporary duty assignment. The subject employee claimed daily maid tips ranging from \$2 to \$5, for a total of \$43.

Because each of the employees claimed high amounts for maid tips, the Navy suspected fraud and requested the Naval Investigative Service (NIS) to conduct an investigation of

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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 \$1,344.55, 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 determination that the employees had fraudulently claimed the payment of maid tips. The subject employee disputes the settlement issued in his case, maintaining that the Navy's evidence is insufficient to establish that he submitted a fraudulent claim. He notes that some of the other employees previously filed appeals with our Office^{1/}, submitting affidavits prepared by maids who earlier had been interviewed by the Navy. In these affidavits, the maids state that other hotel personnel had access to the rooms they serviced and may have taken tips left by the employees.

In its administrative report, the Navy challenges the reliability of the affidavits mentioned by the employee. Specifically, the Navy notes that the maids' statements were not taken until April 21, 1983, more than 2 years after the employees had completed their temporary duty assignments. Further, the Navy asserts that the affidavits merely confirm that the maids had not received a majority of tips claimed by the employees. The agency states that NIS interviewed the hotel maids in January 1981, less than 6 weeks after the employees' temporary duty assignment, and that the evidence collected through these interviews should be accorded greater weight.

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:

^{1/} We decided three prior appeals in B-213629, January 17, 1985; B-213620, March 14, 1985; and B-213624, May 10, 1985.

"* * * 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.

The investigative materials concerning the subject employee contain a day-shift maid's sworn statement that she serviced the employee's room and that, "[h]e left me various amounts of money on several occasions which totalled to approximately \$4." Also, the report summarizes an interview with a night chambermaid who reportedly serviced the employee's room and stated that she received no tips from that room. We believe that this evidence, particularly the day-shift maid's sworn statement, establishes a strong inference that the employee fraudulently misrepresented his daily expenditure for maid tips.

Although the employee refers to affidavits subsequently prepared by the day-shift maid and night chambermaid, those affidavits do not rebut the inference of fraud established by the maids' earlier statements. Both of the later statements merely speculate that other maids or hotel staff may have taken tips left by the employees, and actually tend to confirm that the maids did not receive the claimed tips. Furthermore, as the Navy points out, the reliability of the affidavits is subject to question since they were taken more than 2 years after the employees had completed their temporary duty assignment.

Accordingly, we conclude that the Navy has sustained its burden of establishing that the subject employee fraudulently claimed the payment of maid tips on each day of his 19-day temporary duty assignment. Because a fraudulent claim for any subsistence item taints the entire subsistence allowance for that day, we hold that the subject employee

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is not entitled to recover any of the subsistence expenses recouped from him. See generally B-212354, August 31, 1983; and 57 Comp. Gen. 664 (1978).

For the reasons stated above, we sustain our Claims Group settlement.

for Milton J. Aroslan
Comptroller General
of the United States