



Decision

(1)

Matter of: Ronnie G. Eberle, et al.

File: B-249170.3

Date: January 29, 1993

DIGEST

Claimants seek reimbursement of temporary duty expenses. Although there are minor discrepancies as to which rooms the employees occupied, the investigative report relied upon by the agency does not contain evidence sufficient to overcome the existing presumption in favor of honesty and fair dealing. Further, investigation by the Department of Justice established that the employees actually paid the amounts for lodging reflected in their vouchers to the apartment complex where they were staying while on temporary duty. Under these circumstances, the employees are entitled to reimbursement of subsistence expenses and any amounts recouped should be returned.

DECISION

Messrs. Ronnie G. Eberle, Erdman D. Peterson, and Donovan D. Elting request that we reconsider our Claims Group's action which denied their claims for lodging expenses while on temporary duty.¹ For the following reasons, we reverse our Claims Group's action and grant their claims.

The record shows that the claimants rented apartments in the Broadmoor Apartment Complex while on temporary duty in Meridian, Mississippi, from February 17 through April 6, 1987, and they submitted lodging receipts in the amount of \$25 per day. Since the receipts all listed the same room number, C-25, fraud was suspected.

During a subsequent Naval Investigative Service investigation, the present manager of the apartment complex confirmed that the lodging receipts in question were issued by the previous manager, who had died before the investigation was initiated. She did not know, however, exactly which

¹Settlement Certificate Z-2866934, Z-2866935, and Z-2866936, Mar. 5, 1992 (three cases consolidated), reversing Z-2866934, Z-2866935, and Z-2866936, Oct. 29, 1991.

apartments the claimants had stayed in, and of course, the previous manager was unavailable to substantiate the claimants' recollections. Furthermore, the Naval Investigative Service report, on which our Claims Group relied in denying these claims, showed that the claimants' recollections of which rooms they occupied and of whom they stayed with in those rooms during their temporary duty periods were mutually inconsistent. Thus, our Claims Group, upon reconsideration, denied their claims. See fn. 1, supra.

In their appeals, the claimants contend that the Department of the Navy has not presented sufficient evidence to justify denying them reimbursement for their temporary duty periods and to have recouped their TDY allowances, which it did. For the following reasons, we agree with the claimants' contentions.

As our Office has stated in 4 C.F.R. § 31.7 (1992), the burden of proof is on claimants to establish the liability of the United States, and the claimants' right to payment. On the other hand, 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 doubt and amounts to more than a 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. A mere discrepancy or inaccuracy, in itself, cannot be equated with an intent to defraud the government.²

After receiving the claimants' appeals, our Office contacted the Department of Justice which had also investigated this matter. The Department of Justice report which our Office received in response to our inquiry concluded that the claimants committed no federal criminal law violations regarding their claims for travel reimbursement during the periods involved, and that they actually paid the amounts for lodging reflected in their travel vouchers to the Broadmoor Apartment Complex even though it was difficult to determine exactly which apartments the claimants had occupied during their temporary duty periods. Furthermore, the claimants were never targets of the Department of Justice investigation, and indeed testified on behalf of the government before the Grand Jury investigating this matter.

²Civilian Employee of the Department of the Air Force, B-200642, Dec. 5, 1983, and cases cited therein. The cited decision was also before our Office on two prior occasions, see 61 Comp. Gen. 399 (1982) and 60 Comp. Gen. 357 (1981).

The Department of Justice investigation has clearly established that the claimants actually paid the amounts for lodging reflected in their travel vouchers to the Broadmoor Apartment Complex, where they were staying while they were on temporary duty. While neither the claimants nor the current manager at this late date can clearly establish the exact apartments occupied, there is no doubt concerning the fact of the payments and the nightly room rate. The employees were charged \$25 per night regardless of whom they shared a room with. Therefore, we believe that the claimants have established their right to payment, and the minor discrepancies as to which rooms were occupied, and by whom those rooms were occupied, do not constitute a sufficient reason to deny the claimants' temporary duty expenses.

Accordingly, we reverse our Claims Group action, and grant these employees' claims. The Department of the Navy should refund the amounts of money which it has recouped from these employees for their temporary duty periods in Meridian, Mississippi.

for Seymour E. Hinchman
James F. Hinchman
General Counsel