



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Joyce Liverca

File: B-255565

Date: April 20, 1994

DIGEST

Employee was erroneously authorized per diem at her official duty station. Without specific authority of law, the government may not pay per diem or subsistence expenses to civilian employees at their official duty stations regardless of unusual circumstances. Furthermore, an authorization contrary to law or regulation does not create an entitlement to reimbursement. Employee's claims are denied.

DECISION

The Forest Service, Department of Agriculture, requests a decision as to whether it may pay the voucher of Ms. Joyce Liverca for expenses at her official duty station and whether Ms. Liverca's indebtedness for the cost of an airplane ticket erroneously given to her by the Forest Service may be waived. For the following reasons, we deny payment of her voucher, but we grant waiver of her indebtedness for the airplane ticket.

Ms. Liverca is an employee of the Forest Service, Department of Agriculture, whose official duty station is Juneau, Alaska. On November 1, 1992, the Forest Service placed her in a leave without pay (LWOP) status, with her consent, and Ms. Liverca returned to John Day, Oregon. In early May 1993, the Forest Service requested and Ms. Liverca agreed to perform duty in Juneau, Alaska, to assist in some high priority work involving the Exxon Valdez oil spill. The Forest Service purchased a round-trip airplane ticket in the name of Ms. Liverca for \$868 by using a Government Travel Request (GTR). This ticket was used by Ms. Liverca to travel from Oregon to Alaska, and return. This purchase was erroneous because it is a federal employee's personal

This request was submitted by Mr. Edward P. Darragh, Authorized Certifying Officer, Department of Agriculture, Washington, DC. Reference: 6540.

responsibility to return to her official duty station from LWOP.

Ms. Liverca traveled from Oregon to her official station, Juneau, Alaska, on May 9, 1993, performed her assignment over the following weeks, and returned to Oregon on June 8, 1993. In connection with her assignment, Ms. Liverca has submitted a voucher in the amount of \$4,499.50.

The Forest Service's submission states that Ms. Liverca acted in good faith in agreeing to travel to and work the assignment in Juneau and did complete it. Furthermore, a Forest Service travel office employee gave Ms. Liverca erroneous advice to the effect that she would receive a per diem allowance while on duty in Juneau, Alaska. Ms. Liverca, acting in good faith, relied on her erroneous travel orders and this advice.

The general rule is that, without specific authority of law, the government may not pay per diem or subsistence expenses to civilian employees at their official duty stations regardless of unusual circumstances. William Perkette, 71 Comp. Gen. 517 (1992). Furthermore, an authorization contrary to law or regulation does not create an entitlement to reimbursement. Michael Moran, 66 Comp. Gen. 666 (1987).

As a narrow exception to the general rule, stated above, our decisions have allowed reimbursement for such subsistence expenses incurred by protectors of life and government property in an emergency situation. Richard G. Rogge, B-189003, July 5, 1977; 53 Comp. Gen. 71 (1973). Exceptions have also been allowed due to the unique nature of an agency's training requirements, see e.g., ACTION, B-193034, July 31, 1979, and in situations where there is a threat to an employee's life arising from performance of official duties. Joan M. Jenkins, B-225089, Sept. 21, 1987. See also Angeles National Forest Employees, B-251567, May 6, 1993.

While Ms. Liverca's work was considered high priority by the agency, there is no evidence that it falls within the narrow exception stated above to the rule against paying per diem or subsistence expenses at the official duty station.

We regret that Ms. Liverca may have been misled as to her entitlements. However, payments of money from the federal treasury are limited to those authorized by statute, and even erroneous advice or information given by a government

²This voucher has not been paid. The total amount of \$4,499.50 consists of \$2,376 for lodging, \$2,053.50 for meals and incidental expenses, and \$70 for mileage.

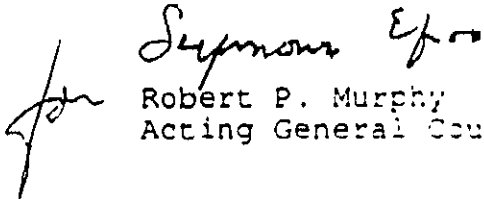
employee cannot estop the government from denying benefits not otherwise permitted by law. Office of Personnel Management v. Richmond, 496 U.S. 414 (1990); Charles W. Walsh, B-254371, Sep. 2, 1994; Riva Fralick, 64 Comp. Gen. 472 (1985). Thus, we must deny payment of all claims made by Ms. Liverca on her voucher.

The Forest Service also requests that Ms. Liverca's indebtedness for the cost of the airplane ticket, erroneously given to her by the Forest Service, be waived. The Forest Service's report demonstrates that there is no indication of fraud, lack of good faith or fault on Ms. Liverca's part, and that it would be against equity and good conscience and not in the best interests of the United States to deny waiver since Ms. Liverca was unaware that she was not entitled to travel to Juneau and return at government expense.

We concur with the findings of the Forest Service's report and we grant waiver of the erroneous payment of Ms. Liverca's airfare in the amount of \$868 pursuant to 5 U.S.C. § 5584 (1988). See Ronald Bartell, B-225977, Apr. 14, 1988 (waiver of erroneous payment of airfare purchased by GPO).

In view of the extenuating circumstances of Ms. Liverca's situation and of two other Forest Service employees, who financially assisted Ms. Liverca to maintain her hotel room in Juneau, Alaska, so that she could continue her Forest Service assignment, the Forest Service has also requested that these matters be submitted to Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d) (1988). In this regard, the Forest Service should prepare a detailed report to our Office, showing the justification for such a request and the actual amount of money expended by those involved. See Gary L. Fryman, B-252195, July 26, 1993, and John H. Taelle, 65 Comp. Gen. 679 (1986).

Accordingly, we deny payment of Ms. Liverca's voucher, but we grant waiver of the erroneous payment of her airfare.


Robert P. Murphy
Acting General Counsel