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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Patricia J. Youmans - Waiver - Travel Advance
File: B-251365
Date: April 28, 1994

DIGEST

A new appointee in the foreign service was assigned to an initial 30 days of training in the Washington area before her assignment overseas. She received travel orders providing for per diem at the training location subject to travel regulations and a travel advance for per diem for the 30 days. Subsequently, she was held not entitled to per diem because she remained at her residence in Waldorf, Maryland, and commuted to the training location. Her debt for the travel advance is not subject to waiver because it does not appear to have been based on erroneous orders, and even if the orders are considered erroneous, she did not incur expenses in detrimental reliance on the travel advance living in her own house, or while living in a motel in Waldorf after sale of the house.

DECISION

This decision is in response to a request for waiver of a claim against an employee of the Department of State for a travel advance she received for per diem for a period during which she was not entitled to per diem. For the reasons explained below, waiver is denied.

Background

By letter of February 2, 1989, addressed to Ms. Patricia J. Youmans at her home address in Waldorf, Maryland, she was advised by a State Department representative that she was being appointed in the Foreign Service as a secretary, and she was directed to report for duty on March 9, 1989, in Rosslyn, Virginia. Subsequently, she received a personnel action and travel authorization dated February 10, 1989, providing for her detail to the Department for approximately 30 days of training pending determination of her post of assignment. The authorization also provided that all travel

¹While Ms. Youmans was a new appointee in the Foreign Service, the record indicates that she had over 8 years prior government service at the time of this appointment.

expenses and maximum per diem were authorized in accordance with Volume 6, Foreign Affairs Manual (6 FAM), and that per diem in accordance with 6 FAM § 154.3-3 was authorized for the period of training.

Ms. Youmans reported for duty on March 9, 1989, and was provided a \$2,900 travel advance for 30 days per diem which the agency indicates was made on the basis that she would incur actual expenses for which per diem is payable. At that time, she was advised that she would begin a language training class on April 9.

On March 30 Ms. Youmans was advised that there would be a change in her training schedule in that the language class she was to attend had been canceled and she would be departing for her post, Santiago, Chile, on April 21. Apparently Ms. Youmans previously had placed her house in Waldorf on the market, and upon learning of the change in her schedule, she completed arrangements for the sale of the house. On April 7 she and her daughter moved into a motel in Waldorf, and settlement on the house sale was made on April 10. On April 19, Ms. Youmans was told that the language training was rescheduled and that she would not leave for Chile until August 8. This advice was confirmed later in an amendment to her travel authorization.

From the day Ms. Youmans first reported for duty until she departed for Chile on August 8, she resided in Waldorf, Maryland, where her daughter attended high school, and commuted to her temporary duty station. From March 9 to April 7 she resided in her own home, and for the balance of the period she resided in a motel in Waldorf.

When Ms. Youmans filed claims with the agency for per diem for this period, the agency disallowed the claims on the basis that since Ms. Youmans resided in Waldorf, which is her official residence and is within easy commuting distance of her training site, she is not entitled to per diem, the purpose of which is to reimburse an employee for meals and lodging on temporary duty while she maintains a residence elsewhere.

Ms. Youmans's claim was forwarded to our Claims Group as an appeal from the agency's denial. The Claims Group sustained the agency's denial of the claim for essentially the same reasons as the agency, citing our decision Joanne E. Johnson, B-193401, May 5, 1981, which denied a similar claim.²

²Claims Group's settlement certificate Z-2867739, July 23, 1992.

Ms. Youmans subsequently requested waiver of the agency's claim for refund of the \$2,900 travel advance she received when she first reported for duty in March 1989, which she apparently applied to her living expenses during the period in question. The agency has forwarded the request for waiver to us for consideration.

In support of her request for waiver, Ms. Youmans states that she inquired of agency personnel to insure that she was entitled to the travel advance and per diem, and she was told yes. She also argues that her stay in the motel was because of the needs of the agency in requiring her to stay in the Washington area until August 8, 1989, after she had sold her house and moved out. She states further, that to require repayment of the travel advance will cause her extreme financial hardship.

The agency, in reporting on Ms. Youmans's request for waiver, states that it is not convinced that Ms. Youmans incurred expenses in reliance on erroneous information. The agency states that the travel advance Ms. Youmans received was calculated identically to the advances other new appointees received for the first 30 days of temporary duty on the basis that the funds would be used to reimburse daily expenses for food and lodging at the temporary duty location. The report further states that the agency is certain that Ms. Youmans did not fully explain her intent to commute each day from her place of residence, or she would not have been given an affirmative response to her questions regarding entitlement to the advance of funds.

In addition the agency report indicates that Ms. Youmans must have placed her home on the market at the time of her appointment in order to schedule a settlement date by April 10 predicated on the last minute cancellation of her language training and adjusted departure date of April 21. The agency indicates, therefore, that the fact the language training was canceled and then reinstated seems to have had little affect on her overall anticipation of reimbursement of per diem expenses while remaining in the Waldorf area. The agency also indicates that had they been advised of the specific circumstances, they would have cautioned Ms. Youmans not to expect reimbursement of per diem for expenses at Waldorf incurred while residing in her residence or when she moved into commercial lodging there.

Analysis

Pursuant to 5 U.S.C. § 5584, and implementing Standards for Waiver, 4 C.F.R. Part 91 (1993), we may waive a claim of the United States arising out of an "erroneous payment" of pay or allowances, including travel allowances, the collection

of which would be against equity and good conscience and not in the best interests of the United States.

A travel advance is considered merely a loan to an employee to be used for allowable travel expenses, with refund of any excess amount.³ Thus, ordinarily an employee's indebtedness for a travel advance is not considered as arising out of an erroneous payment subject to waiver. However, to the extent a travel advance is made to cover expenses erroneously authorized and the employee actually incurs such expenses in detrimental reliance on the erroneous orders, and to the extent it cannot be applied to other properly authorized expenses, we consider it an erroneous payment subject to consideration for waiver. See Major Kenneth M. Dieter, 67 Comp. Gen. 496 (1988); Rajindar N. Khanna, 67 Comp. Gen. 493 (1988); and 4 C.F.R. § 91.4(d).

In Ms. Youmans's case, as noted above, the travel orders authorized per diem for the 30-day training period in accordance with 6 FAM, and the \$2,900 travel advance was paid to her on the basis that she would incur expenses pursuant to those travel orders for which per diem is authorized. In this regard, 6 FAM § 1516 (eff. Dec. 28, 1988), provides:

"New appointees who reside within 25 miles of the temporary duty location at the time of appointment or other employees who commute daily from their permanent residence are not entitled to any per diem or subsistence."

The record in Ms. Youmans's case does not state the mileage between her residence in Waldorf and the temporary duty location in Rosslyn, Virginia, where her first 30 days of training were conducted. However, the highway distance for the most direct route from Waldorf to Rosslyn appears to be 22 miles.⁴ On that basis, 6 FAM § 1516, supra, would have precluded paying per diem to Ms. Youmans even had she occupied commercial lodgings near Rosslyn to avoid the commute from Waldorf. However, if the actual mileage from her residence to the training site exceeded 25 miles, it appears she would have been entitled to per diem had she incurred expenses for which it is payable incident to the temporary duty by occupying commercial quarters near the temporary duty station.

³See 5 U.S.C. § 5705, and 54 Comp. Gen. 190 (1974).

⁴Standard Highway Mileage Guide, Rand, McNally & Co., p. 341, Map V-11.

As noted, Ms. Youmans states that she was advised by agency personnel that she was entitled to the per diem. However, the agency report indicates that they are not aware of any circumstance under which she would have been entitled to per diem while remaining in her own residence, and they are certain that Ms. Youmans did not fully explain her intent to commute each day from her place of residence.

In this situation, there may have been some ambiguity under the terms of the travel order as to whether Ms. Youmans would have been entitled to per diem, depending on the highway distance discussed above, if she had occupied commercial lodging near Rosslyn. However, the travel orders did not on their face authorize per diem for an employee commuting from her residence, and their terms were subject to the FAM provisions and longstanding rules prohibiting paying per diem in such circumstances.⁵ Therefore, in this case it does not appear that the travel advance was based on an erroneous authorization by the agency, so as to now categorize it as an "erroneous payment." However, as explained below, even if it could be so categorized, it would not qualify for waiver because Ms. Youmans does not appear to have spent it in detrimental reliance on the authorization.

Concerning the initial 30-day period (March 9-April 7, 1989) for which the travel advance was made, Ms. Youmans's travel voucher shows that she claimed only the meals and incidental expense portion of per diem at the rate of \$34 per day for a total of \$1,020. Although the agency states that the \$2,900 advance was computed based on full per diem, including lodging, applicable at the training facility location, apparently she did not claim the lodging portion of per diem for that period because she was residing in her own house.⁶ Obviously, during this period she would have incurred similar expenses for meals and incidentals whether or not per diem had been authorized for her. That is, it cannot be said that she relied to her detriment on an erroneous per diem authorization in incurring the usual expenses of living and eating in her own residence. See Major Kenneth M. Dieter, 67 Comp. Gen. at 498-499.

For the next 60-day period, April 7-June 5, 1989, Ms. Youmans claimed 60 days' meals and incidental expenses at the rate of \$17 per day (1/2 the rate applicable for the first 30 days per 6 FAM § 154.3-3c for the 31st through

⁵See Joanne E. Johnson, B-193401, May 5, 1981, and decisions cited therein.

⁶See 6 FAM § 154.3-3b, applicable when "no lodging cost" is incurred.

120th day), for a total of \$1,020. She also claimed lodging costs for this period during which she lodged in a motel in Waldorf because she had sold her house. For the first 30 days of this period she claimed per diem for lodging at the rate of \$33, and for the second 30 days she claimed lodging at the rate of \$16.50, for a total of \$1,485.

Ms. Youmans's expenses incurred during this period staying in commercial lodging in Waldorf also do not appear to have been incurred in detrimental reliance on an erroneous per diem authorization pursuant to temporary duty in Rosslyn. They appear, instead, to have been incurred as a result of her personal decision to sell her house, apparently in contemplation of her future assignment in Chile. That is, whether or not she had been authorized per diem, presumably she would have sold her house and would have incurred expenses for lodging and eating elsewhere pending departure for Chile. While perhaps the changes in her training dates may have led her to schedule settlement on her house sooner than she otherwise contemplated, what additional expenses she incurred are speculative since it is unclear when she otherwise would have moved out of her house and what her living expenses in her house were. In any event, had she remained in her house beyond April 7 (or April 10), she no doubt would have incurred expenses associated with living in her house and for meals and incidentals.

In view of the above, we do not find that Ms. Youmans's debt for the \$2,900 travel advance qualifies for waiver. Accordingly, her request for waiver is denied.

Seymour Efron

for
Robert P. Murphy
Acting General Counsel