



United States  
General Accounting Office  
Washington, D.C. 20548

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Office of the General Counsel

B-255306

November 8, 1994

Colonel W. A. Rogers  
Directorate for Debt and  
Claims Management  
DFAS -- Indianapolis Center  
Attn: FYL-W  
Mail Stop 91  
8899 East 56th Street  
Indianapolis, Indiana 46249-0885

Dear Colonel Rogers:

This is in response to the appeal of Mr. [redacted] from that portion of our Claims Group action which, solely on jurisdictional grounds, declined to consider for waiver \$3,390.68 of educational transportation allowances which the Department of the Army expended on behalf of his two dependent sons prior to December 28, 1985.<sup>1</sup> For the following reasons, we find that these educational transportation allowances were allowable, and that Mr. [redacted] is not indebted to the government for those expenditures. Thus, there are no erroneous payments which need to be waived.<sup>2</sup>

In 1984, the Army assigned Mr. [redacted] and several other civilian employees and military personnel with authorized dependents to its United States Military Training Mission (USMTM or Army Mission) in Saudi Arabia. Since there were no Department of Defense Dependent Schools (DODDS) high schools available within Saudi Arabia, the employees' command-sponsored minor dependents in grades 10 through 12 were enrolled, through DODDS, in schools outside that country. The Army Mission arranged for the transportation of the dependents which they were required to use.

In Mr. [redacted] case, the Army Mission paid a total amount of \$33,314.64 for his two sons' education allowances and educational transportation allowances in the 1984-85 school year, and \$34,984.78 for the same in the 1985-86 school year

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<sup>1</sup>Z-2904115, Apr. 27, 1990.

<sup>2</sup>Our findings with respect to Mr. [redacted] appear to be also applicable to Mr. [redacted]. If so, he also would not be indebted to the government.

to attend The American School in Montegnola-Lugano, Switzerland. For the reasons explained further below, the Army Mission later determined that Mr. \_\_\_\_\_ was indebted to it for \$20,699.42. Our Claims Group's Settlement Certificate, Z-2904115, Apr. 27, 1990, waived \$17,308.74 of the indebtedness for the payments made by the Army Mission on Mr. \_\_\_\_\_ behalf. However, Claims Group declined to consider for waiver educational transportation allowances of \$3,390.68 which the Army Mission expended on behalf of Mr. \_\_\_\_\_ two dependent sons prior to December 28, 1985, because there was no statutory authority to waive erroneous payments of travel and transportation expenses made prior to that date.<sup>3</sup>

The Army Mission made the above expenditures for the education allowance under 20 U.S.C. § 926 (1988), and for the educational transportation allowances under 5 U.S.C. § 5924(4) (1988).<sup>4</sup> Until April 1987, it was the Army Mission's policy to pay tuition, transportation, and other allowable costs, in full, without any ceiling.<sup>5</sup> Those expenditures by the Army Mission were fully reimbursable to the government by Saudi Arabia under the Foreign Military Sales program.<sup>6</sup>

During a Command Inspection in April 1987, the Inspector General (IG) found that the Army Mission's payments of educational allowances for students attending schools outside Saudi Arabia were in excess of the amounts allowed under Department of State Standardized Regulations. The IG

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<sup>3</sup>See \_\_\_\_\_, B-224647, Sept. 28, 1987, and B-197290, Feb. 24, 1986. See also Educational Travel Expenses, B-209292, Feb. 1, 1983.

<sup>4</sup>In this regard, it is important to note that the education allowance authorized by 20 U.S.C. § 926 (1988) covers only the military members and civilian employees of DOD. The regulations implementing 20 U.S.C. § 926 (1988), which were promulgated by DOD pursuant to 20 U.S.C. § 931 (1988) are now found at 32 C.F.R. Part 71 (1993). However, educational travel and transportation expenses for civilian employees of DOD are authorized by 5 U.S.C. § 5924(4) (1988), with implementing regulations found at Chapter 280 (Educational Travel) of the Department of State Standardized Regulations (Government Civilians, Foreign Areas).

<sup>5</sup>See Memorandum from Chief, USMTM-Major General John R. Farrington, dated July 15, 1987.

<sup>6</sup>See Memorandum from Chief of Staff, USMTM--Colonel Jerry L. Harville to United States Central Command, dated January 9, 1993.

informed the Army Mission that, by Memorandum for Regional Directors of Dependents Schools, dated August 27, 1984, the Director, DODDS, had required all Department of Defense activities to use the Department of State Standardized Regulations in order to determine the maximum amounts payable for the education allowance of dependents<sup>7</sup>.

While the 1984 Memorandum changed the DODDS policy by imposing a maximum amount payable for the education allowance of dependents, that same 1984 Memorandum by its own terms did not make any changes regarding students' travel and transportation allowances. In this regard, it states that:

"DODDS policies governing approval of . . . student travel . . . are unchanged."<sup>8</sup>

Thus, the 1984 Memorandum imposing a ceiling on the education allowance was not intended to affect the DODDS policy governing educational travel and transportation allowances for DOD dependents.

In response to the IG's Report and in implementing the 1984 Memorandum, the Army Mission recalculated its employees' entitlements to education allowances for the period of the two school years involved (1984/85 and 1985/86). However, although the 1984 Memorandum did not change the DODDS policies on educational transportation allowances, the Army Mission erroneously combined the amounts paid for the education allowance (tuition, room and board, and miscellaneous expenses) for the years involved with the amounts paid for educational transportation allowances for those years.

Because the combined amounts exceeded the maximum amounts allowable for the education allowance under the Department of State Standardized Regulations, the Army Mission found that Mr. [redacted] and several other employees had been given educational transportation allowances in excess of their entitlements for those years and were indebted to the government for the excess amounts.<sup>9</sup>

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<sup>7</sup>See Memorandum from Chief, USMTM-Major General John R. Farrington, dated July 15, 1987

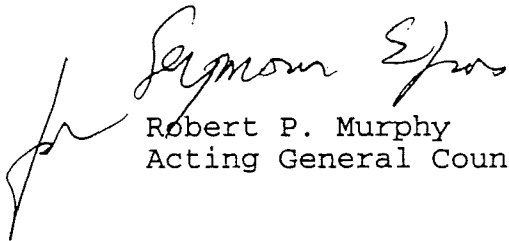
<sup>8</sup>See Memorandum for Regional Directors of Dependents Schools, dated August 27, 1984, at 2.

<sup>9</sup>See Chart prepared as an enclosure to letter from Colonel D.A. Wright to our Claims Group, dated April 10, 1990. As footnote 4, supra, shows, education allowances and educational transportation allowances are two separate

As stated above, the Department of Defense has separated educational expenses for dependents of civilian employees into: (1) an education allowance, and (2) an educational transportation allowance. The 1984 memorandum applied maximum limits only to the education allowance, and explicitly stated that DODDS policies governing approval of student travel are unchanged. Thus, we find that the expenditures made by the Army Mission for the transportation expenses of Mr. \_\_\_\_\_ sons to and from the school in which they had been enrolled are allowable under 5 U.S.C. § 5924(4) (1988).<sup>10</sup>

Accordingly, since the educational transportation allowances paid for Mr. \_\_\_\_\_ sons are allowable, Mr. \_\_\_\_\_ is not indebted to the government for those expenditures and there are no further erroneous payments which need to be waived.

Sincerely yours,

  
Robert P. Murphy  
Acting General Counsel

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allowances governed by two separate statutes and regulations, and thus they never should have been combined.

<sup>10</sup>See Memorandum from Chief of Staff, USMTM-- Colonel Jerry L. Harville to United States Central Command, dated January 9, 1993, concluding that there was no indebtedness for the employees involved since they were in compliance with the USMTM policy at the time of the expenditures involved.

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**DIGEST**

Department of Defense employee stationed overseas was granted education allowances and educational transportation allowances for his dependents. The Army erroneously concluded that the amounts paid for the latter exceeded the maximum amounts allowable and found the employee to be indebted for the excess. Our Claims Group granted waiver for most of the debt but, solely on jurisdictional grounds, found that the educational transportation allowances paid prior to December 28, 1985, were not eligible for waiver. The dependents were properly enrolled in schools outside Saudi Arabia, and we find that their educational transportation allowances were properly paid. Thus, the employee is not indebted to the government for those allowances, and there are no erroneous payments to be waived.