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DECISION



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

FILE: **B-183310**

DATE: **DEC 3 1976**

MATTER OF: **Thomas H. Hamara - Renewal Agreement Travel Expenses**

DIGEST: Army civilian employee, authorized renewal agreement travel by military or commercial air only, is entitled to travel expense reimbursement for travel by foreign surface vessel only on basis of constructive cost of air travel. Army's failure to authorize surface travel for medical reasons was not improper when military medical authority did not find air travel "medically contra-indicated."

By letter dated May 1, 1976, Mr. Thomas H. Hamara, a civilian employee of the Department of the Army (Army), has requested reconsideration of our decision B-183310, September 9, 1975, which allowed reimbursement on a constructive cost basis for renewal agreement travel and temporary duty travel which he performed in May 1972.

The Army issued Travel Order No. 4-511 on April 5, 1972, authorizing Mr. Hamara to travel, under the authority of 5 U.S.C. § 5728(a) (1970), from Frankfurt, West Germany, to Long Beach, California, for the purpose of renewal agreement travel. The Army authorized travel under the travel order by Government and commercial rail, air, and bus, but it did not authorize transportation by ship. Due to a phobia about flying, Mr. Hamara sought medical certification precluding his travel by aircraft. Upon review of Mr. Hamara's records, however, the Army medical officer was unable to conclude that air travel was "medically contra-indicated;" he suggested, rather, that travel by Aeromedical Evacuation (Air Evac) was indicated by the medical records. Notwithstanding the fact that his request for surface travel by foreign flag vessel with reimbursement was denied, Mr. Hamara traveled from Wiesbaden, West Germany, to Lollavre, France, from which he sailed aboard the S.S. Franca to New York City. He returned to Wiesbaden, presumably recrossing the Atlantic by foreign flag vessel, in June 1972. Mr. Hamara subsequently claimed the following travel expenses: Ship travel, \$709.93; land portion of travel

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to ship terminal, approximately \$34; and per diem, \$172.30. In accordance with our September 9, 1975 decision, our Transportation and Claims Division (now Claims Division) issued a Settlement Certificate on October 24, 1975, in the amount of \$495.43 in Mr. Hamara's favor computed on the basis of the constructive cost of Government air (MAC) from Frankfurt, Germany, to McGuire AFB, New Jersey. The facts in this case and the reasons for the disallowance of the claim were fully set forth in our decision of September 9, 1975, and need not be repeated here except as pertinent to the discussion of this case.

Mr. Hamara was reimbursed for the constructive cost of air travel from Germany to the United States on the basis of section 2.2 of OMB Circular No. A-7 and paragraph C6001-3a of 2 JTR. Section 2.2 of Circular No. A-7 authorizes the agency to specify railroads, airlines, helicopter service, ships, buses, etc. That section also authorizes the agency to select which of these particular methods of transportation may be used by the employee for travel. Paragraph C6001-3a of 2 JTR provides that the transportation officer determines the mode of travel unless the officer directing the travel specifies a particular mode. Surface transportation from Germany to the United States was not authorized.

Mr. Hamara's request for reconsideration is based on his allegation that, because he was unable to travel by air, the Army's refusal to authorize his travel by foreign surface vessel was improper. He specifically asserts that failure to include surface vessel among the authorized modes of travel is an attempt to "force employees to travel via air," and a policy which denies their entitlement to round-trip travel at Government expense. He further contends not only that the cost of travel by Air Evac would exceed the cost of travel by surface vessel but that it would also necessitate additional hospitalization costs to the employee, inconsistent with statutory and regulatory provisions authorizing round-trip travel at Government expense.

As a civilian employee of the Army, Mr. Hamara could have traveled via Air Evac only upon a finding by an appropriate medical authority that his medical needs so required. ICD Directive 4515.13, October 31, 1970; see DOD 4515.13R, July 14, 1972, para. 11-2j(3).

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Had Air Evac transportation been employed, reimbursement for travel expenses would, nevertheless, have been subject to the regulations governing renewal agreement travel. Mr. Hamara, however, declined to travel by Air Evac. Assuming arguendo that use of this alternative means of travel would have resulted in greater costs to the Government than the cost of surface vessel transportation, the hypothetical cost savings does not operate to authorize travel by an otherwise unauthorized mode, nor does it entitle the employee to reimbursement in excess of that authorized by the regulations. D-178075, August 27, 1973. The extent of the Army's obligation to pay round-trip renewal agreement travel expenses was subject to the limitations imposed by the above-cited regulations. In view of the circumstances surrounding Mr. Hamara's travel, we remain of the opinion that reimbursement of his travel expenses was properly computed on a constructive cost of travel basis and that the applicable regulations required that reimbursement be limited to the amount computed on that basis.

By letter of May 12, 1976, Mr. Hamara submitted for our additional consideration a letter from his private physician, dated December 12, 1972, indicating that Air Evac travel would have adversely affected his condition. This letter, however, was included in the record considered at the time of our decision of September 9, 1975. His request for reconsideration, therefore, presents nothing new which would justify a reversal of our decision of September 9, 1975.

Accordingly, our decision of September 9, 1975, is sustained.

R. J. KELLER

Deputy Comptroller General
of the United States