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DECISION

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

FILE: B-191190 DATE: February 13, 1980

MATTER OF: Dwight G. Garretson

AGC00102

DIGEST: (1) Overseas employee of Federal Bureau of Investigation (FBI) permanently assigned to Caracas, Venezuela, traveled from Caracas to Oklahoma City, Oklahoma, in order to receive medical treatment. Government funds may not be used to pay employee's travel since at the time of such travel there was no specific statutory authorization for payment of medical travel for overseas employees of the FBI.

(2) In the absence of clear Congressional intent to the contrary and in view of strict rules of statutory construction concerning retroactive application of laws, the medical travel benefits extended to overseas employees of the FBI by section 2(8) of the Department of Justice Appropriation Authorization Act, Fiscal Year 1979, apply only to medical travel which occurred on or after the beginning of fiscal year 1979. Employee's travel which occurred prior to the beginning of fiscal year 1979 is not payable under this new provision.

(3) Employee may not be reimbursed for the travel expenses incurred by his wife from Caracas, Venezuela, to Oklahoma City, Oklahoma, to be with employee who traveled there for medical treatment since there is no basis for payment of the employee's travel expenses and there is no authority to pay for an attendant when travel of employee is not authorized.

The issue is whether Mr. Dwight G. Garretson, an overseas employee of the Federal Bureau of Investigation (FBI), is

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- [Entitlement to Paid Travel Expenses]

entitled to be paid travel expenses incurred by him and his wife in order to obtain medical treatment for him. For the reasons stated below Mr. Garretson's claim is denied.

This question was presented by a letter of April 27, 1979, from Mr. Garretson appealing our decision Dwight G. Garretson, B-191190, March 16, 1979.

The facts were presented in our previous decision and they need not be repeated here. In our decision Dwight G. Garretson, supra, we denied Mr. Garretson's claim for the payment of travel expenses from Caracas, Venezuela, to Oklahoma City, Oklahoma, incurred by him and his wife in 1977 to obtain medical treatment for pain in the upper portion of his back. Denial was based on the fact that at the time the travel expenses were incurred no statutory authority existed for payment by the Government of travel expenses of overseas employees of the FBI for the purpose of receiving medical treatment.

Mr. Garretson seeks reconsideration for two reasons. First, he contends that his travel from Caracas to Oklahoma City was not performed at his request but at the insistence of the Embassy Personnel Officer and Embassy Nurse. In this regard he argues that since the travel was performed under orders issued by his superiors the United States is legally obligated to pay his travel expenses. Secondly, Mr. Garretson points out that the benefits of 22 U.S.C. § 1157 (1976) have been extended to FBI employees by section 2(8) of the Department of Justice Appropriation Authorization Act, Fiscal Year 1979, (Act), Pub. L. 95-624, 92 Stat. 3459, 3460, November 8, 1978. Therefore, he contends that he should be entitled to these new benefits.

As previously stated, Mr. Garretson's claim was denied on the grounds that Government funds could not be used to pay for travel for medical purposes since at the time he incurred these expenses there was no specific statutory authorization for payment of medical travel for overseas employees of the FBI. However, travel for medical purposes as provided for by 22 U.S.C. § 1157 (1976) has been extended to include FBI employees by section 2(8) of the Act. Section 1157 of title 22, United States Code (1976) provides that in the event an officer or employee of

the Foreign Service requires medical care while stationed abroad in a locality where there is no qualified person or facility to provide such care, travel expenses of such person may be paid to the nearest locality where suitable medical care can be obtained. Therefore, the question becomes whether Mr. Garretson would be entitled to the medical travel benefits conferred upon FBI employees by the Act even though his travel expenses were incurred prior to the Act's passage.

Statutes will be generally construed so as to provide prospective application. Union Pacific RR Co. v. Laramie Stock Yards Co., 231 U.S. 190, 199 (1913); South East Chicago Commission v. HUD, 488 F. 2d 1119, 1122-1123 (7th Cir. 1973). However, where the intention of the Congress to make a statute retroactive is stated in express terms, such intent must be followed. De Rodulfa v. United States, 461 F. 2d 1240, 1247 (D.C. Cir. 1972).

The Act itself does not provide for retroactive application but, to the contrary, it authorizes appropriations "for the fiscal year ending September 30, 1979." Also, we have been unable to discover any language in its legislative history which would clearly indicate an intent on the part of Congress to give the Act a retroactive effect. In the absence of such indication we must conclude that the benefits conferred upon FBI employees by section 2(8) of the Act with respect to travel for medical purposes apply only to travel for medical purposes which occurred on or after the beginning of fiscal year 1979. Therefore, since Mr. Garretson incurred the travel expenses in question prior to the beginning of fiscal year 1979 he is not entitled to receive payment for these expenses under section 2(8) of the Act. Thus, there is no statutory basis for payment of Mr. Garretson's travel expenses to obtain medical treatment.

In addition, Mr. Garretson also argues that the United States is legally obligated to pay for his travel expenses since he was authorized the use of appropriated funds and Government Transportation Requests to purchase air transportation for his travel to obtain medical treatment. It is a well-settled rule of law, however,

that the Government cannot be bound or estopped by the unauthorized acts of its agents. See: Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); and Dunphy v. United States, 208 Ct. Cl. 986 (1975) and cases cited at 989.

Therefore, in light of the fact that at the time Mr. Garretson incurred the travel expenses in question there was no statutory authorization for the payment of his medical travel expenses and since the Government was not legally obligated to pay for such travel, Government funds may not be used to pay for such travel.

We have also been asked to reconsider our decision concerning reimbursement of the travel expenses incurred by Mrs. Garretson from Caracas to Oklahoma City in order to be with Mr. Garretson. In our previous decision Dwight G. Garretson, supra, we stated that before a spouse's travel expenses may be authorized in this type of situation there must be statutory authority for the payment of the employee's medical travel expenses and there must also be a certification by the employee's attending physician that an attendant was medically required.

As we have stated above, there is no statutory authority for the payment of Mr. Garretson's medical travel expenses. Therefore, Mr. Garretson may not be reimbursed for the travel expenses incurred by his wife.

Accordingly, our decision in Dwight G. Garretson, B-191190, March 16, 1979, is sustained.

Deputy Comptroller General
of the United States